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ABSTRACT

This manual addresses the state and federal requirements for the administration and delivery of services and supports for children with disabilities under the age of 21 in Delaware. It is designed to provide a single source of regulatory requirements which apply to programs for children with disabilities, a cross reference of federal and state requirements, a means for the improvement of quality and scope of programs, and a basis for monitoring. The manual is organized to follow the flow of processes related to the identification, evaluation, and placement of children. Pages utilize a three-column format: the left column contains index reference and key words; the next column contains the federal Individuals with Disabilities Education Act, Part B regulations published on March 12, 1999; and the right column contains the regulations of the Delaware Department of Education (DOE). The right column also contains Delaware DOE notes and applicable brief sections of the Delaware Code. Following the body of the manual, several appendices are provided, including sample forms, interagency agreements summary listings, other applicable DOE regulations of the State Board of Education, identification procedures for determination of a learning disability, sections of the Delaware Code, and definitions of key terms. (CR)

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ED 450 533

Delaware

Department of Education

The Administrative Manual for Special Education Services

(AMSES)

(formerly known as the Administrative Manual: Programs for Exceptional Children – 6/20/96 revision)

Approval by the Delaware State Board of Education
As of May 18, 2000
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PREFACE

ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES

The *Administrative Manual for Special Education Services* addresses the State and federal requirements for the administration and delivery of services and supports for children with disabilities under the age of 21. This Manual is intended to provide:

- a single source of regulatory requirements which apply to programs for children with disabilities;
- a cross reference of federal and State requirements;
- a means for the improvement of quality and scope of programs for children with disabilities; and
- a basis for monitoring to determine compliance of programs for children with disabilities with applicable State and federal statutes and regulations.

The Manual is organized to follow the flow of processes related to the identification, evaluation, and placement of children. Pages utilize a three-column format: the left column contains index reference and key words; next column contains the federal IDEA – Part B Regulations (34 CFR Part 300) published on March 12, 1999; and the right column contains the regulations of the Department of Education (DOE 925). The right column also contains DOE notes and applicable brief sections of the *Delaware Code*.

Following the body of the Manual, the reader will find several Appendices, as follows:

A. Sample Forms
B. Interagency Agreements Summary Listings
C. Other Applicable DOE Regulations of the State Board of Education
D. Identification Procedures for Determination of a Learning Disability – Tables 1 & 2
E. Sections of *Delaware Code*
F. Definition of Terms

Individuals or groups who may need additional information or interpretation of the content to the Administrative Manual should contact Dr. Martha A. Brooks. The document is available at the Delaware Department of Education's website (http://www.doe.state.de.us), (then click on the link to Exceptional Children), and in every public school in the State.

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	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
	A. ACCESS TO SPECIAL EDUCATION AND RELATED SERVICES	1.0 Adoption and Incorporation of Federal Regulations 1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 *CFR* Parts 300 and 303, are adopted and incorporated as part of these Regulations. 1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the ***Delaware Code*** (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail. 1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* (A-M adopted April 20, 2000).
1. FAPE Definitions	**§300.13 Free appropriate public education.**	**FREE, APPROPRIATE PUBLIC EDUCATION**

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
	As used in this part, the term **free appropriate public education** or FAPE means special education and related services that— (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part;	*Delaware Code.* *§ 3120. Right to receive public education.* *The State shall provide, in the school districts of the State, or in other state institutions and agencies or in special programs and private agencies as established or approved by the Department with the approval of the State Board, that each disabled person as defined in this chapter shall receive a free and appropriate public education designed to meet his or her needs. The Department of Education shall be the agency responsible for the implementation of this required provision.* *Delaware Code.* *§ 3101. Definitions.* *(2) "Free appropriate public education" means special education that is specially designed instruction including classroom instruction, instruction in physical education, home institutions, and related services as defined by Department of Education rules and regulations approved by the State Board of Education and as may be required to assist a handicapped person to benefit from an education that:* *a. Is provided at public expense, under public supervision and direction and without charge in the public school system;* *b. Meets the standards of the Department of Education as set forth in this title or in the rules and regulations of the Department as approved by the State Board;* *c. Includes elementary, secondary or vocational education in the State; and* *d. Is individualized to meet the unique needs of the handicapped person.*

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IDEA-Part B Regulations of March 12, 1999

Regulations of the Dept. of Ed. 925 – Children with Disabilities

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350.

(Authority: 20 U.S.C. 1401(8))

2. FAPE

§300.121 Free appropriate public education (FAPE).

(a) **General**. Each State must have on file with the Secretary information that shows that, subject to §300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.

(b) **Required information**. The information described in paragraph (a) of this section must—

(1) Include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the State's policy relating to FAPE; and

(2) Show that the policy—

(i)(A) Applies to all public agencies in the State; and

(B) Is consistent with the requirements of §§300.300-300.313; and

(ii) Applies to all children with disabilities, including children who have been suspended or expelled from school.

(c) **FAPE for children beginning at age 3**. (1) Each State shall ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.342(c).

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
	(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.	
3. FAPE for children suspended/ expelled from school	(d) **FAPE for children suspended or expelled from school.**	***DOE Note:*** *In addition, children with disabilities retain all rights as general education children in relation to due process and disciplinary procedures. See DOE regulations in Appendix C.*
	(1) A public agency need not provide services during periods of removal under §300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.	
	(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must—	
	(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is—	
	(A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519(b) (§300.520((a)(1)); or	
	(B) For behavior that is not a manifestation of the child's disability, consistent with §300.524; and	
	(ii) Provide services consistent with §300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is—	
	(A) For drug or weapons offenses under §300.520(a)(2); or	

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with §300.521.

(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519 (§300.520(a)(1)).

(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with §300.524.

(e) **Children advancing from grade to grade**. (1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

(2) The determination that a child described in paragraph (a)(1) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations.

(Authority: 20 U.S.C. 1412(a)(1))

4. Exception to FAPE

§300.122 Exception to FAPE for certain ages.

(a) **General**. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

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	(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in one or more of those age groups.	
4.a. Incarcerated youth in adult facilities	(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to children with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility— (A) Were not actually identified as being a child with a disability under §300.7; and (B) Did not have an IEP under Part B of the Act. (ii) The exception in paragraph (a)(2)(i) of this section does not apply to students with disabilities, aged 18 through 21, who— (A) Had been identified as a child with disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or (B) Did not have an IEP in their last educational setting, but who had actually been identified as a "child with a disability" under §300.7.	
4.b. Awarded regular high school diploma	(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma. (ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated but have not been awarded a regular high school diploma. (iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503. (b) **Documents relating to exceptions**. The State must have on file with the Secretary—	

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	(1)(i) Information that describes in detail the extent to which the exception in paragraph (a)(1) of this section applies to the State; and (ii) A copy of each State law, court order, and other documents that provide a basis for the exception; and (2) With respect to paragraph (a)(2) of this section, a copy of the State law that excludes from services under Part B of the Act certain children who are incarcerated in an adult correctional facility. (Authority: 20 U.S.C. 1412(a)(1)(B))	
5. Public charter school	**§300.312 Children with disabilities in public charter schools.** (a) Children with disabilities who attend public charter schools and their parents retain all rights under this part. (b) If the public charter school is an LEA, consistent with §300.17, that receives funding under §§300.711-300.714, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (c) If the public charter school is a school of an LEA that receives funding under §§300.711-300.714 and includes other public schools— (1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and (2) The LEA must meet the requirements of §300.241. (d)(1) If the public charter school is not an LEA receiving funding under §§300.711-300.714, or a school that is part of an LEA receiving funding under §§300.711-300.714, the SEA is responsible for ensuring that the requirements of this part are met.	

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	(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.600. (Authority: 20 U.S.C. 1413(a)(5))	
1. Child Find	**B. IDENTIFICATION** **§300.125 Child find.**	2.0. Identification of Children with Disabilities 2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.
		Delaware Code. ***§3122. Identification and reporting of disabled person.*** ***Each school district shall be required to identify, locate and evaluate, or reevaluate, any person residing within the confines of that school district who is disabled, regardless of the severity of the disability, and who is in need of special education and related services. The Department of Education with the approval of the State Board of Education, shall provide through rules and regulations that a practical method for carrying out this section be developed.***

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		The identification system so developed shall provide information concerning the time and method of the evaluation or reevaluation of the disabled person and shall indicate the training, education or related services he or she is receiving and the location of that training, education or related services. The system shall further indicate any instance in which the person is not receiving training, education or related services and the reason for that situation. Nothing in this chapter or the rules and regulations issued there under shall authorize or require medical treatment of any person who objects, or, in the case of a minor, whose parent or guardian objects thereto on religious grounds.
	(a) General requirement. (1) The State must have in effect policies and procedures to ensure that— (i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services. (2) The requirements of paragraph (a)(1) of this section apply to— (i) Highly mobile children with disabilities (such as migrant and homeless children); and (ii) Children who are suspected of being a child with a disability under §300.7 and in need of special education, even though they are advancing from grade to grade.	
2. Documentation	(b) Documents relating to child find. The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including—	

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(1) The name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;	
(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;	
(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—	
(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and	
(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and	
(4) A description of the method the State uses to determine which children are currently receiving special education and related services.	
(c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.	***DOE Note:*** *The Department of Education and the Department of Health and Social Services are jointly responsible for ensuring the Child Find system as defined in IDEA for infants and toddlers with disabilities. The Child Find system will be cooperatively operated through Child Development Watch and Local Education Agencies. The Interagency Agreement, for the Delaware Early Intervention System Under Part C of the Individuals with Disabilities Education Act, further describes the operation of the system.* ***See Appendix B.***
(1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b)(2) of this section.	
(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.	

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	(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section. (d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in §300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act. (e) Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of §§300.560-300.577. (Authority: 20 U.S.C. 1412 (a)(3)(A) and (B))	
3. Screening		2.2 Health Screening: Health, hearing, vision and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education*, 800.2, 800.3, 800.4 and 800.5. ***See Appendix B***
4. Referral to instruction support team process		2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

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		2.3.1. Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing. 2.3.2. When the instructional support team determines the child should be evaluated to determine eligibility and possible need for special education services, the recommendation will be forwarded to the appropriate staff member within 10 school days. Concurrently, the parent shall be notified within 10 days of the determination by the instructional support team that a child should be evaluated to determine eligibility and need for special education services. The notification shall include a request for parental consent for initial evaluation, which complies with section 300.505 of the federal regulations (see Procedural Safeguards, section 14.0). Referrals for an individual child that do not contain all required documentation, including the evidence as described in 2.3, may be returned to the instructional support team with a request for the required information, but a return to the instructional support team shall not delay parental notification and request for consent for initial evaluation. 2.3.3. A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.
	C. EVALUATION AND RE-EVALUATION TO DETERMINE ELIGIBILITY	
1. Initial eval.	**§300.320 Initial evaluations.**	

ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES
As of May 18, 2000 (Effective July 1, 2000) revised 8/17/00
FAPE 300. SECTION OF FEDERAL REGS/MANUAL

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	(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—	
1.a. Consent		
1.b. Determine eligibility	(1) To determine if the child is a "child with a disability" under §300.7; and	***DOE Note*** *See C.5.d. and D., Procedures for criteria to determine if a child is a "child with a disability".*
1.c. Determine ed. needs	(2) To determine the educational needs of the child.	
1.d. Prior notice	(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that— (1) The evaluation is conducted in accordance with the procedures described in §§300.530-300.535; and (2) The results of the evaluation are used by the child's IEP team in meeting the requirements of §§300.340-300.350. (Authority: 20 U.S.C. 1414(a), (b), and (c))	***DOE Note:*** *See J.4. and 5., Requirements on written notice that must occur 10 business days prior to proposed action.*
1.e. Time frame		3.0. Procedures for Evaluation and Determination of Eligibility 3.1. Initial evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation, and the meeting to determine eligibility shall occur within 45 school days, or 90 calendar days, whichever is shorter, of the receipt of consent for the initial evaluation, unless additional time is agreed upon.
2. Initial eval. prior to provision of services	**§300.531 Initial evaluation.**	

	Each public agency shall conduct a full and individual initial evaluation, in accordance with §§300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.	
	(Authority: 20 U.S.C. 1414(a)(1))	
3. Eval. procedures	**§300.532 Evaluation procedures.**	3.2. Evaluation Procedures:
	Each public agency shall ensure, at a minimum, that the following requirements are met:	
3.a. Test/eval. materials	(a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act—	
	(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and	
	(ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and	
	(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.	
3.b. Variety of tools	(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—	
	(1) Whether the child is a child with a disability under §300.7; and	
	(2) The content of the child's IEP.	

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3.c. Standardized test	(c)(1) Any standardized tests that are given to a child— (i) Have been validated for the specific purpose for which they are used; and (ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.	
3.d. Qualified evaluation specialists		3.2.1. Qualified Evaluation Specialists 3.2.1.1. A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.
	(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.	
3.e. No single IQ quotient	(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.	
3.f. Accurate	(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).	
3.g. No single procedure	(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.	

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3.h. Assess all areas	(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.	
	(h) In evaluating each child with a disability under §§300.531-300.536, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.	
3.i. Technically sound	(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.	
3.i.(1) Directly determine educa. needs	(j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.	
	(Authority: 20 U.S.C. 1412(a)(6)(B), 1414(b)(2) and (3))	
3.i.(2) Age of data		3.2.2. Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.
4. Determine needed eval. data	**§300.533 Determination of needed evaluation data.**	
	(a) **Review of existing evaluation data**. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall -	
4.a. Review existing data	(1) Review existing evaluation data on the child, including—	
	(i) Evaluations and information provided by the parents of the child;	
	(ii) Current classroom-based assessments and observations; and	
	(iii) Observations by teachers and related services providers; and	

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4.b. Identify additional data needed	(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine - (i) Whether the child has a particular category of disability, as described in §300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability; (ii) The present levels of performance and educational needs of the child; (iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.	
4.c. No meeting Required	(b) **Conduct of review**. The group described in paragraph (a) of this section may conduct its review without a meeting.	
4.d. Produce data	(c) **Need for additional data**. The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.	
4.e. If no additional data needed	(d) **Requirements if additional data are not needed**. (1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents—	
4.f. Parent notification	(i) Of that determination and the reasons for it; and	
4.g. Parent right to override	(ii) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.	

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	(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents. (Authority: 20 U.S.C. 1414(c)(1), (2) and (4))	
5. Determine eligibility	**§300.534 Determination of eligibility**	
	(a) Upon completing the administration of tests and other evaluation materials -	3.2.3. Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of children.
5.a. Team	(1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in §300.7; and	
5.b. Copy of report and documentation to the parent	(2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.	3.2.4. The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for children with a learning disability. *DOE Note:* *See Appendix A for sample Evaluation Report format that districts will utilize.*
	(b) A child may not be determined to be eligible under this part if— (1) The determinant factor for that eligibility determination is— (i) Lack of instruction in reading or math; or (ii) Limited English proficiency ; and (2) The child does not otherwise meet the eligibility criteria under §300.7(a).	
5.c. Must evaluate prior to dismissal	(c)(1) A public agency must evaluate a child with a disability in accordance with §§300.532 and 300.533 before determining that the child is no longer a child with a disability.	

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	(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law. (Authority: 20 U.S.C. 1414(b)(4) and (5), (c)(5))	
5.d. Procedures	**§300.535 Procedures for determining eligibility and placement.** (a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.7, and the educational needs of the child, each public agency shall—	
5.e. Multiple sources of information	(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and	
5.f. Documentation	(2) Ensure that information obtained from all of these sources is documented and carefully considered.	***DOE Note:*** *See C.5. b. on Evaluation Report, and Appendix A for sample forms.*
5.g. If eligible and in need, IEP must be developed	(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.340-300.350. (Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))	
5.h. Speech/ language impaired child		3.3 Procedures for Determining Eligibility and Placement 3.3.1. Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

6. Additional procedures for LD

Additional Procedures For Evaluating Children With Specific Learning Disabilities

6.a. Team members

§300.540 Additional team members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include—

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or 3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: Sec. 5(b), Pub. L. 94-142)

6.b. Criteria for determining LD

§300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression.

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(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading comprehension.

(vi) Mathematics calculation.

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: Sec. 5(b), Pub. L. 94-142)

6.c. Observation

§300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: Sec. 5(b), Pub. L. 94-142)

6.d. Written report

§300.543 Written report.

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of—

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	(1) Whether the child has a specific learning disability;	
	(2) The basis for making the determination;	
	(3) The relevant behavior noted during the observation of the child;	
	(4) The relationship of that behavior to the child's academic functioning;	
	(5) The educationally relevant medical findings, if any;	
	(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and	
	(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.	
	(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.	***DOE Note:*** *See Appendix A for sample of Evaluation Report format. The parent as a member of the IEP team needs to submit a separate statement presenting his or her conclusions if the team's decision does not reflect his or her conclusions.*
	(Authority: Sec. 5(b), Pub. L. 94-142)	
7. Reevaluations	**§300.321 Reevaluations.**	
	Each public agency shall ensure that—	
	(a) A reevaluation of each child with a disability is conducted in accordance with §300.536; and	
	(b) The results of any reevaluations are addressed by the child's IEP team under §§300.340-300.349 in reviewing and, as appropriate, revising the child's IEP.	
	(Authority: 20 U.S.C. 1414(a)(2))	
7. Reevaluation	**§300.536 Reevaluation.**	
	Each public agency shall ensure—	

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7.a. At least triannually	(a) That the IEP of each child with a disability is reviewed in accordance with §§300.340-300.350; and (b) That a reevaluation of each child, in accordance with §§300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. (Authority: 20 U.S.C. 1414(a)(2))	***DOE Note:*** *See C.3. on Evaluation Requirements.*
7.b. Written notice		***DOE Note:*** *See J.4. and 5., Requirements on written notice that must occur 10 business days prior to proposed action.*
7.c. Written report		3.3.2. Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for children with a learning disability. ***DOE Note:*** *See Appendix A for Evaluation Report format that districts will utilize.*
7.d. Cognitive ability		3.3.3. Cognitive ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations must lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

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8. Participation in State assessment	**§300.138 Participation in assessments.** The State must have on file with the Secretary information to demonstrate that— (a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary; (b) As appropriate, the State or LEA - (1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; (2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and (3) Beginning not later than, July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section. (Authority: 20 U.S.C. 1412(a)(17)(A))	3.3.4. Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, ***Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency.***

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D.	**ELIGIBILITY** **§300.7 Child with a disability.**	4.0. Eligibility for Services
1. Age of Eligibility	(a) **General**. (1) As used in this part, the term **child with a disability** means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.	4.1. Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation. 4.1.1. The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive. 4.1.2. The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday. 4.1.3. The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through 20 years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

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		4.1.4. The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.
		4.1.5. The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible.
		4.1.6. The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.
		4.1.7. Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year, including appropriate summer services through August 31.
	(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a **child with a disability** under this part. (ii) If, consistent with §300.26(a)(2), the related service required by the child is considered special education rather than a related service under	

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	State standards, the child would be determined to be a **child with a disability** under paragraph (a)(1) of this section. **Children aged 3 through 9 experiencing developmental delays**. The term **child with a disability** for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with §300.313, include a child— (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and Who, by reason thereof, needs special education and related services.	
2. Eligibility criteria **3. General**	(c) **Definitions of disability terms**. The terms used in this definition are defined as follows:	4.2. Definitions And General Eligibility/Exit Criteria 4.2.1. Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 *Del. C*. Ch. 17,§1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified

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		evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.
4. Exit Criteria		4.2.2. Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider: 4.2.2.1. Eligibility criteria; 4.2.2.2. Data-based and/or documented measures of educational progress; and 4.2.2.3. Other relevant information. ***DOE Note:*** *See C.5.c. for evaluation requirement prior to dismissal.*
5. Autism	(1)(i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.	4.3. Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations: 4.3.1. The presence of an impairment of verbal and non-verbal communication skills, including the absence of speech or the presence of unusual speech features, and a combination of the following: 4.3.1.1. Impairment in reciprocal social orientation/ interaction;

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	(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.	4.3.1.2. Extreme resistance to change and/or control; 4.3.1.3. Preoccupation with objects and/or inappropriate use of objects; and/or 4.3.1.4. Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior. 4.3.2. Identification of autism shall be documented through an evaluation either by a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team. 4.3.3. Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.
6. Developmental delay		4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment. 4.4.1. In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required.

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		4.4.1.1. Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or 4.4.1.2. Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or 4.4.1.3. Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report. 4.4.2. Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date
7. Deaf/Blind	(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.	4.5. Eligibility Criteria for Deaf-Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition: 4.5.1. A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees;

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		4.5.2. An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition. 4.5.3. Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria. 4.5.4. Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.
8. Emotional Disturbance	(4) **Emotional disturbance** is defined as follows:	4.6. Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews. 4.6.1. The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, **and** 4.6.2. Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

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	(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:	4.6.2.1. Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other children of similar age under similar circumstances. That is, the child's characteristic behaviors are sufficiently distinct from those of his or her peer groups; **or**
	(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.	4.6.2.2. Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others.
	(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.	
	(C) Inappropriate types of behavior or feelings under normal circumstances.	4.6.3. The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.
	(D) A general pervasive mood of unhappiness or depression.	
	(E) A tendency to develop physical symptoms or fears associated with personal or school problems.	
	(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.	

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9. Hearing Impairment	(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.	4.7.1. Eligibility Criteria for Hearing Impairment: A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and 4.7.2. The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition. 4.7.3. The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.
10. Learning disability	(10) **Specific learning disability** is defined as follows: (i) **General**. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.	4.8. Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required: 4.8.1. Written documentation for the formative intervention process used with the student (see section 2.3, "Referral to Instructional Support Team," above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

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	(ii) **Disorders not included**. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.	4.8.2. A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and 4.8.3. A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education. 4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.
11. Mental Disability	(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.	4.9 Mental Disability: The degree of mental disability is defined as follows: - Educable Mental Disability (EMD) - I.Q. 50-70, ± 5 points; - Trainable Mental Disability (TMD) - I.Q. 35-50, ± 5 points; - Severe Mental Disability (SMD) - I.Q. below 35. 4.9.1. Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

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		4.9.2. The age of eligibility for children identified under the TMD and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years, inclusive - these children may be served at age 3 as having a developmental delay.
12. Multiple Disability	(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.	
13.	**Physical Impairments**	
13.a. Orthopedic impairment	(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).	4.10. Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns.
13.b. Other health impairments	(9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (ii) Adversely affects a child's educational performance.	Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions; sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility. 4.10.1. A qualified physician shall document that a child has a physical impairment in order to be

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considered for special education and related services under the above definition.

4.10.2. The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the child has:

4.10.2.1. Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2. Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3. Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3. Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1. Medical records documenting the physical impairment (required), and current medical prescriptions (e.g., O.T./P.T., medication, catheterization, tube feeding, etc.) if available;

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		4.10.3.2. Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and 4.10.3.3. Prior program or school records (if available); and , when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation. 4.10.4. Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.
14. Speech or Language Impairment	(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.	4.11. Speech and/or Language Impairment Eligibility Criteria: Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder. 4.11.1. The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech

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		and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.
15. Traumatic brain injury	(12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.	4.12. Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition. 4.12.1. The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living. 4.12.2. The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.
16. Visual impairment	(13) **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))	4.13. Visual Impairment Eligibility Criteria 4.13.1. Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best

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		correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.
		4.13.2. Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.
		4.13.3. A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees (legally blind), or a visual acuity of 20/70 or less in the better eye after all correction (partially sighted);
		4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.
		4.13.5. The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.
17. Preschool Speech Delay		4.14. **Preschool Speech Delay** (3 and 4 year olds only)
		4.14.1. A speech disability is defined as a communication disorder/delay involving articulation, voice

quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2. In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1. A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1. articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

4.14.2.1.2. conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

4.14.2.1.3. oral motor involvement which may affect the development of normal articulation,

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		4.14.2.1.4. speech fluency, or 4.14.2.1.5. voice quality. 4.14.3. Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay. 4.14.4. The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

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E.	**INDIVIDUALIZED EDUCATION PROGRAMS**	
1. Definition	**§300.340 Definitions related to IEPs.**	
1.a. IEP	(a) **Individualized education program**. As used in this part, the term **individualized education program** or **IEP** means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.341-300.350.	
1.b. Participating agencies	(b) **Participating agency**. As used in §300.348, **participating agency** means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. (Authority: 20 U.S.C. 1401(11), 1412(a)(10)(B))	
2. SEA and public agency responsibility	**§300.341 Responsibility of SEA and other public agencies for IEPs.** (a) The SEA shall ensure that each public agency— (1) Except as provided in §§300.450-300.462, develops and implements an IEP for each child with a disability served by that agency; and (2) Ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency. (b) Paragraph (a) of this section applies to— (1) The SEA, if it is involved in providing direct services to children with disabilities, in accordance with §300.370(a) and (b)(1); and (2) Except as provided in §300.600(d), the other public agencies described in §300.2, including LEAs and other State agencies that provide special education and related services either directly, by contract, or through	

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	other arrangements.	
	(Authority: 20 U.S.C. 1412(a)(4), (a)(10)(B))	
3. When IEPs must be in effect	**§300.342 When IEPs must be in effect.**	
3.a. Annual IEP	(a) **General**. At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction.	
	(b) **Implementation of IEPs**. Each public agency shall ensure that—	
	(1) An IEP—	
3.b. Before spec. ed./related serv. provided	(i) Is in effect before special education and related services are provided to an eligible child under this part; and	5.0 Individualized Education Program (IEP): An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.
3.c. Implementing the IEP	(ii) Is implemented as soon as possible following the meetings described under §300.343;	
	(2) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and	
	(3) Each teacher and provider described in paragraph (b)(2) of this section is informed of—	
	(i) His or her specific responsibilities related to implementing the child's IEP; and	
	(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.	
3.d. IEP/IFSP	(c) **IEP or IFSP for children aged 3 through 5.**	
	(1) In the case of a child with a disability aged 3 through 5 (or, at the discretion of the SEA a 2-year-old child with a disability who will turn	

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	age 3 during the school year), an IFSP that contains the material described in section 636 of the Act, and that is developed in accordance with §§ 300.341-300.346 and §§300.349-300.350, may serve as the IEP of the child if using that plan as the IEP is— (i) Consistent with State policy; and (ii) Agreed to by the agency and the child's parents. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall— (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and (ii) If the parents choose an IFSP, obtain written informed consent from the parents. (d) **Effective date for new requirements**. All IEPs developed, reviewed, or revised on or after July 1, 1998 must meet the requirements of §§300.340-300.350. (Authority: 20 U.S.C. 1414(d)(2)(A) and (B), Pub. L. 105-17, sec. 201(a)(2)(A), (C))	
4. IEP meeting	**§300.343 IEP meetings.**	
4.a. General	(a) **General**. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with §300.342(c), an IFSP).	
4.b. Initial IEP	(b) **Initial IEPs; provision of services**. (1) Each public agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of a child—	

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	(i) The child is evaluated; and	
	(ii) If determined eligible under this part, special education and related services are made available to the child in accordance with an IEP.	
4.c. Within 30 days	(2) In meeting the requirement in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services.	
	(c) **Review and revision of IEPs**. Each public agency shall ensure that the IEP team—	
4.d. Review annually	(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and	
4.e. Revise as appropriate based on:	(2) Revises the IEP as appropriate to address -	
4.e. (1) Lack of expected progress in gen. curriculum	(i) Any lack of expected progress toward the annual goals described in §300.347(a), and in the general curriculum, if appropriate;	
4.e (2) Reevaluation	(ii) The results of any reevaluation conducted under §300.536;	
4.e. (3) Information provided by parents	(iii) Information about the child provided to, or by, the parents, as described in §300.533(a)(1);	
4.e. (4) Child's needs	(iv) The child's anticipated needs; or	
4.e. (5) Other matters	(v) Other matters.	5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a

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	(Authority: 20 U.S.C. 1413(a)(1), 1414(d)(4)(A))	child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education. **DOE Note** *It is recommended that a staff member from the receiving program attend the IEP meeting.*
4.f. Transferring children		5.2. IEP of Transferring Children with Disabilities
4.f.(1) Temporary placement		5.2.1. A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.
4.f. (2) Request for records		5.2.2 The request for, and the forwarding of, records shall be in accordance with Title 29 Chapter 5 of ***Delaware Code***.
4.f. (3) Documenting agreement for temporary services		5.2.3. A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.
4.f. (4) IEP review within 30/60 days		5.2.4. A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and within sixty (60) calendar days for children transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and

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		procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.
5. IEP team	**§300.344 IEP team.**	
5.a. General	(a) **General**. The public agency shall ensure that the IEP team for each child with a disability includes—	5.3 IEP team: Participants at an IEP meeting shall be collectively identified as the IEP team.
5.b. Parent	(1) The parents of the child;	
5.c. Regular education teacher	(2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);	
5.d. Special education teacher	(3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;	
5.e. Agency rep.	(4) A representative of the public agency who -	5.3.1. The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.
	(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;	
	(ii) Is knowledgeable about the general curriculum; and	
	(iii) Is knowledgeable about the availability of resources of the public agency;	
5.f. Individual who can interpret eval.	(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;	
5.g. Other individuals	(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and	

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5.h. The child	(7) If appropriate, the child.	
5.i. Transition services participants	(b) **Transition services participants.**	
5.i. (1) Participants	(1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of— (i) The student's transition services needs under §300.347(b)(1); or (ii) The needed transition services for the student under §300.347(b)(2); or (iii) Both.	
5.i. (2) Student preferences/ interests	(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.	
5.i. (3) Other agency rep(s)	(3)(i) In implementing the requirements of §300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.	
5.i. (4) Failure to participate in transition services	(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.	
5.j. Agency responsibility	**§300.348 Agency responsibilities for transition services.**	
5.j. (1) Failure to provide transition services	(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.347(b)(1), the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the	

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	student set out in the IEP.	
5.j. (2) Responsibility to provide or pay	(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.	
	(Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))	
	(§300.344 continued)	
5.k. Determination of knowledge & special expertise	(c) **Determination of knowledge and special expertise**. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.	
5.l. Designate another agency	(d) **Designating a public agency representative**. A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.	***DOE Note:*** *Others as may be appropriate for the IEP development such as: guidance counselors, nurses (or other medical personnel), social workers, other related services personnel, transportation representative, assistive technology staff.*
	(Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7), (B))	
6. Parent participation	**§300.345 Parent participation.**	
	(a) **Public agency responsibility—general**. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—	
6.a. Notice	(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and	5.3.2. The District shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. ***See 12.0 - Disciplinary Procedures.***

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6.b. Scheduling	(2) Scheduling the meeting at a mutually agreed on time and place.	
	(b) **Information provided to parents.** (1) The notice required under paragraph (a)(1) of this section must— (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in §300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).	
6.c. When child is age 14+:	(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—	
6.c. (1) Initiate transition services planning	(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in §300.347(b)(1); and	
6.c. (2) Invite student	(ii) Indicate that the agency will invite the student.	
	(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must— (i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in §300.347(b)(2); (ii) Indicate that the agency will invite the student; and (iii) Identify any other agency that will be invited to send a representative.	

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6.d. Ensure parent Participation	(c) **Other methods to ensure parent participation**. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.	
6.e. Meeting without a parent	(d) **Conducting an IEP meeting without a parent in attendance**. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as -	
6.e. (1) Documentation	(1) Detailed records of telephone calls made or attempted and the results of those calls;	
	(2) Copies of correspondence sent to the parents and any responses received; and	
	(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.	
6.f. Interpreter	(e) **Use of interpreters or other action, as appropriate**. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.	
6.g. Copy of IEP for Parent	(f) **Parent copy of child's IEP**. The public agency shall give the parent a copy of the child's IEP at no cost to the parent.	
	(Authority: 20 U.S.C. 1414(d)(1)(B)(i))	
7. Develop/ Review/revise IEP	**§300.346 Development, review, and revision of IEP.**	
	(a) **Development of IEP.**	
7.a. General	(1) **General**. In developing each child's IEP, the IEP team, shall consider -	

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7.a. (1) Strengths of child	(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;	
7.a. (2) Parent concerns		
7.a. (3) Results of eval.	(ii) The results of the initial or most recent evaluation of the child; and	
7.a. (4) Results of assessments	(iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.	
7.b. Special factors	(2) **Consideration of special factors**. The IEP team also shall -	***DOE Note**: If the district allows Corporal Punishment per the student code of conduct, see G.9.*
7.b. (1) Behavior	(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;	
7.b. (2) LEP	(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;	
7.b. (3) Blind/VI	(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;	
7.b. (4) Communications	(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and	

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	communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and	
7.b. (5) Assistive technology	(v) Consider whether the child requires assistive technology devices and services.	
7.b. (6) Corporal Punishment		
7.c. Review/ revision of IEP	(b) **Review and Revision of IEP**. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.	
7.d. Statement of special factors	(c) **Statement in IEP**. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.	
7.e. Requirements with regard to regular ed. teacher	(d) **Requirement with respect to regular education teacher**. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of—	***DOE Note***: *See discussion on role of regular education teacher, pp12472, 12477, and 12583 of Appendix A to Part 300 – Notice of Interpretation, March 12, 1999 Rules and Regulations:* *Basically, the IEP team for a child with a disability must include at least one regular education teacher of the child if the child is, or may be participating in the regular education environment. The teacher need not (depending on the needs of the child and the purpose of the meeting) be required to participate in all decisions made as part of the meeting or be present throughout the entire meeting or attend every meeting. The extent of the involvement must be determined on a case-by-case basis, and be based on a variety of factors.* *The regular education teacher should be the teacher who is, or may be, responsible for implementing the IEP. If the child has more than one regular education teacher, the LEA may designate which teacher(s) who will participate on the IEP team. Input should be sought, regardless of who attends the meeting, from all of the child's regular education teachers. The agency must also ensure that (1) the IEP is accessible to each regular education teacher who*

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		is responsible for its implementation; and (2) each regular education teacher is informed of his/her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications, and supports to be provided in accordance to the IEP (p12583). *It is expected that the circumstances will be rare in which a regular education teacher would not be required to be a member of the child's IEP team. However, there may be situations in which a child is placed in a separate school and participates only in meals, recess periods, transportation, and extracurricular activities with non-disabled children and is not otherwise participating in the regular environment, and no change is anticipated in the next 12 months. In these instances, it would not be necessary for a regular education teacher to be a member of the child's IEP team (p12583).*
7.e. (1) Behavior intervention	(1) Appropriate positive behavioral interventions and strategies for the child; and	
7.e. (2) Supplemental aids/supports	(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with 300.347(a)(3).	
	(e) **Construction**. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.	
	(Authority: 20 U.S.C. 1414(d)(3) and (4)(B) and (e))	
8. Content of IEP	**§300.347 Content of IEP.**	
	(a) **General**. The IEP for each child with a disability must include—	5.4. Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.
8.a. PLEP, general curric.	(1) A statement of the child's present levels of educational performance, including -	

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	(i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for non-disabled children); or	
	(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;	
8.b. Goals related to involvement/progress in gen. curricula	(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to -	
	(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for non-disabled children), or for preschool children, as appropriate, to participate in appropriate activities; and	
	(ii) Meeting each of the child's other educational needs that result from the child's disability;	
8.c. Spec. ed./ related services/ /aids/ mods. to be provided	(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—	
	(i) To advance appropriately toward attaining the annual goals;	
	(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and	
	(iii) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this section;	
8.d. Extent of non-participation in regular classroom	(4) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in paragraph (a)(3) of this section;	

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8.e. Participation in assessment program	(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and (ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of - (A) Why that assessment is not appropriate for the child; and (B) How the child will be assessed;	
8.f. Start/ frequency/ location of services	(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and (7) A statement of -	
8.g. Measure progress toward annual goals	(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and	
8.h. How parents are informed	(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled children's progress, of - (A) Their child's progress toward the annual goals; and (B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.	
8.i. Discharge from school bus		5.4.1. The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.
8.j. Transition services	(b) **Transition services**. The IEP must include—	

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8.j. (1) Definition	(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and	
8.j. (2) Coordinated set of activities	(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.	
8.j. (3) Timelines		5.4.2. By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP team.
9. Transfer of rights	(c) **Transfer of rights**. In a State that transfers rights at the age majority, beginning at least one year before a student reaches the age of majority under State law, the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with §300.517.	***Delaware Code.* Title 1, Chapter 7.** ***§701. Age of majority.*** ***A person of the age of 18 years or older on June 16, 1972, and any person who attains the age of 18 years thereafter, shall be deemed to be of full legal age for all purposes whatsoever and shall have the same duties, liabilities, responsibilities, rights and legal capacity as persons heretofore acquired at 21 years of age unless otherwise provided.*** ***Delaware Code.* Title 14, 3101(7)** ***"Parent".*** ***(7) "Parent," for purposes of this chapter, includes a handicapped child's biological or natural parent, or, as appropriate, a stepparent, guardian, surrogate parent or custodian. With respect to a handicapped person who has reached his 18th birthday, and for whom no guardian has been appointed, all***

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		rights and entitlements accorded to parents by this chapter shall be deemed accorded directly to the handicapped person.
10. Students convicted/ incarcerated as adults	(d) **Students with disabilities convicted as adults and incarcerated in adult prisons.** Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in §300.311(b) and (c). (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))	
11. Monitoring IEPs		5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.
12. Private school placements by public agency.	**§300.349 Private school placements by public agencies.** (a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.346 and 300.347.	
12.a. Representation at mtg.	(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.	
12.b. Review/ revise IEP	(b) Reviewing and revising IEPs.	

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	(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.	
12.c. Public agency/ parent involvement	(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—	
	(i) Are involved in any decision about the child's IEP; and	
	(ii) Agree to any proposed changes in the IEP before those changes are implemented.	
12.d. LEA/SEA responsibility	(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.	
	(Authority: 20 U.S.C. 1412(a)(10)(B))	
13. IEP accountability	**§300.350 IEP—accountability.**	
	(a) **Provision of services**. Subject to paragraph (b) of this section, each public agency must—	
	(1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and	
	(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.	
	(b) **Accountability**. Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school, or	

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	agency performance.	
	(c) **Construction— parent rights**. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.	
	(Authority: 20 U.S.C. 1414(d)); Cong. Rec. at H7152 (daily ed., July 21, 1975))	
	§300.309 Extended school year services.	
	(a) **General**.	
14. Extended school year Services	(1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.	
14.a. IEP team decision	(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.340-300.350, that the services are necessary for the provision of FAPE to the child.	
	(3) In implementing the requirements of this section, a public agency may not—	
14.b. Not a particular category	(i) Limit extended school year services to particular categories of disability; or	
14.c. Not unilaterally limited	(ii) Unilaterally limit the type, amount, or duration of those services.	
14.d. Definition	(b) **Definition**. As used in this section, the term **extended school year services** means special education and related services that—	

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	(1) Are provided to a child with a disability— (i) Beyond the normal school year of the public agency;	**DOE Note:** *Extended school year services are special education and/or related services provided outside the standard schedule of school days (Title 14, Delaware Code, Section 1703), for the purpose of providing a free appropriate public education to a particular child, per his/her Individualized Education Program (IEP).*
	(ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA. (Authority: 20 U.S.C. 1412(a)(1))	
14.e. Need for service		5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.
14.e.(1) Degree of impairment		5.6.1. Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.
14.e.(2) Regression/ Recoupment		5.6.2. Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on children who have a

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		consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.
14.e.(3) Breakthrough opportunity		5.6.3. Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.
14.e.(4) Vocational		5.6.4. Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.
		5.6.5. Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.
14.f. Based on IEP		5.6.6. Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

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14.g. Participation in other summer programs		5.6.7. This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.
14.h. Timely Determination		5.6.8. The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.
14.i. Transportation		5.6.9. Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.
14.j. Written notice		5.6.10. Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

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14.k. Procedural safeguards		5.6.11. In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year. **DOE Note:** *Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.*

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F.	**PROGRAMS AND PLACEMENT**	
1. LRE	**§300.550 General LRE requirements.** (a) Except as provided in §300.311(b) and (c), a State shall demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the requirements of §§300.550-300.556. (b) Each public agency shall ensure— (1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and (2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Authority: 20 U.S.C. 1412(a)(5))	6.0. Least Restrictive Environment: Is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:
2. Continuum	**§300.551 Continuum of alternative placements.** (a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for	

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	special education and related services. (b) The continuum required in paragraph (a) of this section must— (1) Include the alternative placements listed in the definition of special education under §300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (Authority: 20 U.S.C. 1412(a)(5))	
3. Settings		
3.a. Regular education classroom		
3.b. Regular classroom < 21%		6.1. Regular Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in: 6.1.1. regular class with special education/related services provided within regular classes, 6.1.2. regular class with instruction within the regular class and with special education/related services provided outside regular classes, or 6.1.3 regular class with special education services provided in resource rooms.
3.c. Resource class		6.2. Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and

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		youth placed in: 6.2.1. resource rooms with special education/related services provided within the resource room, or 6.2.2. resource rooms with part-time instruction in a regular class.
3.d. Self contained class		6.3. Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include pupils who received education programs in public or private separate day or residential facilities. This may include children and youth placed in: 6.3.1. self-contained special classrooms with part-time instruction in a regular class, or 6.3.2. self-contained special classrooms with full-time special education instruction on a regular school campus.
3.e. Public separate day school		6.4. Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in: 6.4.1. public day schools for children with disabilities, or 6.4.2. public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.
3.f. Private separate day school		6.5. Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for children with disabilities. 6.5.1. private day schools for students with disabilities, or

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		6.5.2. private day schools for students with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.
3.g. Public residential placement		6.6. Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in: 6.6.1. public residential schools for children with disabilities, or 6.6.2. public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.
3.h. Private residential facilities		6.7. Private Residential Facilities: Children with disabilities receive special education and related services at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in: 6.7.1. private residential schools for children with disabilities, or 6.7.2. private residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.
3.i. Homebound/ hospital placement		6.8. Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of services which assures a free appropriate public education.

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6.8.1. Where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other children in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2. Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free appropriate public education.

6.8.3. In instances of parental objection to such home instruction, due process provisions apply.

6.8.4. To be eligible for supportive instruction and related services, the following criteria shall be met:

- 6.8.4.1. The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; **and**
- 6.8.4.2. If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; **or**
- 6.8.4.3. If absence is due to severe adjustment problem, be documented by an IEP team, that includes a licensed or certified school psychologist or psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return

4. Placement

§300.552 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that—

5. Decision

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§300.550-300.554;

6. Based on IEP

(b) The child's placement—

to the educational program.

6.8.5. IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

DOE Note: *The IEP team may find that such modern telecommunication technology as videoconferencing allows for medically fragile students or those with contagious diseases to "participate" in classroom activities.*

6.8.6. Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

DOE Note: *Special education is not a location but is services and supports provided to the child in order to meet the IEP goals. Settings do not determine the intensity of services.*

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	(1) Is determined at least annually; (2) Is based on the child's IEP; and	
7. Close as possible to home	(3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if non-disabled;	
8. LRE harmful effect	(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and	
9. Needed modifications	(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. (Authority: 20 U.S.C. 1412(a)(5))	
10. Age-Appropriate		6.9. Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided. 6.9.1. An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.
11. Change of placement		6.9.2. A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in: 6.9.2.1. the amount of time of regular, special education and/or related services; or 6.9.2.2. the settings as identified in 6.1.-6.8 above.

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		6.9.3. A change of placement does not include a change of teachers when the same services are being provided, a change in the schedule of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.
12. Non-academic settings	**§300.553 Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.306, each public agency shall ensure that each child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child. (Authority: 20 U.S.C. 1412(a)(5))	**DOE Note:** *See Section 300.347, p.50*
13. Non-academic services	**§300.306 Nonacademic services.** (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. (Authority: 20 U.S.C. 1412(a)(1))	
14. Physical education	**§300.307 Physical education.** (a) **General**. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.	

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	(b) **Regular physical education**. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to non-disabled children unless— (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's IEP. (c) **Special physical education**. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs. (d) **Education in separate facilities**. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section. (Authority: 20 U.S.C. 1412(a)(25), 1412(a)(5)(A))	
15. Assistive technology	**300.308 Assistive Technology** (a) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5-300.6, are made available to a child with a disability if required as a part of the child's - (1) Special education under §300.26; (2) Related services under §300.24; or (3) Supplementary aids and services under §§300.28 and 300.550(b)(2). (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE. (Authority: 20 U.S.C. 1412(a)(12)(B)(i))	

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16. Vocational education	**300.26(b)(5) Vocational education means**	**Carl Perkins Vocational & Technical Act of 1998 defines vocational and technical education as: organized educational activities that (1) offer a sequence of courses that provide individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a baccalaureate degree, master's, or doctoral degree) in current or emerging employment sectors, and (2) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of an individual.**
	(5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authority: 20 U.S.C. 1401(25))	7.0. Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment. 7.1. Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities. 7.2. Children with disabilities will be provided with equal access to the full range of vocational education programs available to all children including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services. 7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities: 7.3.1. Modification of curriculum, equipment and facilities as needed; 7.3.2. Supportive personnel; 7.3.3. Instructional aids and devices;

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		7.3.4. Guidance, counseling and career development staff who are associated with the provision of such special services; 7.3.5. Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998; 7.3.6. Regular vocational programs with supportive services as identified by the IEP team; and 7.3.7. Special education vocational programs. 7.4. Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in the Individuals with Disabilities Education Act (IDEA).
17. Vocational program options		7.5. Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a continuum of vocational education placements. The continuum of placements includes, but is not limited to: 7.5.1. Regular vocational programs with no supportive services; 7.5.2. Regular vocational programs with supportive services as identified by the IEP team; 7.5.3. Special education vocational programs; 7.5.4. Self-contained vocational programs; and 7.5.5. Community based job training programs.
18. Hearing aids	**§300.303 Proper functioning of hearing aids.**	

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	Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (Authority: 20 U.S.C. 1412(a)(1))	
19. Equipment	**§300.11 Equipment.** As used in this part, the term **equipment** means— (a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio- visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials. (Authority: 20 U.S.C. 1401(6))	8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations. 8.1. All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.
20. Length of school day		9.0 Length of School Day: The minimum length of the instructional school day for a child with disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school

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		day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.
21. Compulsory attendance		10.0. Compulsory Attendance: Compulsory attendance will be in accordance with 14 Del. C. §§ 2703 and 2706, and shall apply to children with disabilities between the ages of 5 and l6. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 Del. C. §2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.
22. Transportation	**§300.24 Related services.**	11.0. Transportation: Transportation of all children to and from school is provided under 14 Del. C., Ch. 29. When special transportation needs are indicated in a child's IEP, transportation becomes a "related service."
	(15) (i) Travel to and from school and between schools;	11.1. Travel to and from school and between schools, including required specialized equipment, shall be at State expense when such travel and/or specialized equipment requirements are specified on the child's IEP, and it is necessary for the implementation of the child's IEP.
	(ii) Travel in and around school buildings; and	11.2. Travel arrangements are to be made in consultation with the local transportation representative when unusual requirements are indicated.
	(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.	11.3. Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.
	(Authority: 20 U.S.C. 1401(22))	

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23. LOP/LEA eligibility	**§300.180 Condition of assistance.** An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§300.220- 300.250. (Authority: 20 U.S.C. 1413(a))	
24. Exception for prior LEA/State policies	**§300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.** If an LEA or a State agency described in §300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act. (Authority: 20 U.S.C. 1413(b)(1))	
25. Amendments to LEA policies	**§300.182 Amendments to LEA policies and procedures.** (a) Modification made by an LEA or a State agency. (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary. (2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures. (b) Modifications required by the SEA. The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—	

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	(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended; (2) There is a new interpretation of the Act by Federal or State courts; or (3) There is an official finding of noncompliance with Federal or State law or regulations. (Authority: 20 U.S.C. 1413(b))	

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G.	**DISCIPLINE PROCEDURES**	
1. Change of placement for disciplinary removals	**§300.519 Change of placement for disciplinary removals.** For purposes of removals of a child with a disability from the child's current educational placement under §§300.520-300.529, a change of placement occurs if—	12.0. Discipline Procedures
1.a. More than 10 consecutive days	(a) The removal is for more than 10 consecutive school days; or	
1.b. A pattern	(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. (Authority: 20 U.S.C. 1415(k))	
1.c. Documentation		12.1. Documentation, including the reasons for the action, must be made for any removal for more than 10 days. In addition to the removals identified in CFR §300.519, the following removals shall constitute a change in placement:
1.d. Removals		
1.e. (1) In school		12.1.1. in-school removals for more than 10 days, if it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum – though in another setting, and (3) receiving those services and modifications described in the IEP; and
1.e. (2) Transportation		12.1.2. removals from transportation, if it results in the child's absence from school for more than 10 days.

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2. Authority of school personnel

§300.520 Authority of school personnel.

School personnel may order—

2.a. 10 days.

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under §300.121(d); and

2.b. Interim alternative ed. setting

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if -

2.b. (1) Weapons

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

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DOE Note: *OSEP provided the following guidance in relation to removal of a student to another placement (p. 12415, March 12, 1999, Rules and Regulations):*

Even when school personnel are appropriately trained and are proactively addressing children's behavior issues through positive behavioral intervention supports, interventions, and strategies, there may be instances when a child must be removed from his or her current placement. When there is agreement between school personnel and the child's parents regarding a change in placement (as there frequently is), there will be no need to bring into play the discipline provisions of the law. Even if agreement is not possible, in general, school officials can remove any child with a disability from his or her regular school placement for up to 10 school days at a time, even over the parents' objections, whenever discipline is appropriate and is administered consistent with the treatment of non-disabled children, §300.520(a)(1). However, school officials cannot use this authority to repeatedly remove a child from his or her current placement if that series of removals means the child is removed for more than 10 school days in a school year and factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another lead to the conclusion that there has been a change in placement. §§300.519-300.520(a)(1). There is no specific limit on the number of days in a school year that a child with a disability can be removed from his or her current placement. After a child is removed from his or her current placement for more than 10 cumulative school days in a school year, services must be provided to the extent required under §300.121(d), which concerns the provision of FAPE for children suspended or expelled from school.

If the child's parents do not agree to a change of placement, school authorities can unilaterally remove a child with a disability from the child's regular placement for up to 45 days at a time if the child has brought a weapon to school or to a school function, or knowingly possessed or used illegal drugs or sold or solicited the sale of controlled substances while at school or a school function, §300.520(a)(2). In addition, if school officials believe that a child with a disability is substantially likely to injure self or others in the child's regular placement, they can ask an impartial hearing officer to order that the child be removed to an interim alternative

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		educational setting for a period of up to 45 days, §300.521. If at the end of an interim alternative educational placement of up to 45 days, school officials believe that it would be dangerous to return the child to the regular placement because the child would be substantially likely to injure self or others in that placement, they can ask an impartial hearing officer to order that the child remain in an interim alternative educational setting for an additional 45 days, §300.526(c). If necessary, school officials can also request subsequent extensions of these interim alternative educational settings for up to 45 days at a time if school officials continue to believe that the child would be substantially likely to injure self or others if returned to his or her regular placement, §300.526(c)(4).
2.b. (2) Illegal drugs	(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.	*Additionally, at any time, school officials may seek to obtain a court order to remove a child with a disability from school or to change a child's current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or others.*
2.c. Required actions	(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under §300.519, including the action described in paragraph (a)(2) of this section—	*Finally, school officials can report crimes committed by children with disabilities to appropriate law enforcement authorities to the same extent as they do for crimes committed by non-disabled students. §300.529.*
2.c. (1) Conduct Functional Behavioral Assessment + implement behavioral plan	(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.	
2.c. (2) Review plan	(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.	
2.c. (3) Develop behavioral inerventions	(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement	

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	those interventions.	
2.c. (4) Additional removals + review of BIP	(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under §300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.	
2.c. (5) IEP team meeting	(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.	
	(d) For purposes of this section, the following definitions apply:	
2.c. (6) Controlled substance	(1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).	
2.c. (7) Illegal drug	(2) **Illegal drug—** (i) Means a controlled substance; but (ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.	
2.c. (8) Weapon	(3) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1), (10))	
3. Authority of Hearing officer	**§300.521 Authority of hearing officer.**	

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3.a. Change in placement via expedited hearing	A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing - (a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; (b) Considers the appropriateness of the child's current placement; (c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and (d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of §300.522(b). (e) As used in this section, the term **substantial evidence** means beyond a preponderance of the evidence. (Authority: 20 U.S.C. 1415(k)(2), (10))	
3.b. Determination of setting	**§300.522 Determination of setting.** (a) **General**. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team. (b) **Additional requirements**. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must— (1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521, that are designed to prevent the behavior	

from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

3.c.Manifestation determination

§300.523 Manifestation determination review.

(a) **General**. If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) **Individuals to carry out review**. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

3.c. (1) IEP team review

(c) **Conduct of review**. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel -

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including -

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

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	(2) Then determine that - (i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; (ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and (iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.	
3.c. (2) Decision	(d) **Decision**. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.	
3.c. (3) Meeting	(e) **Meeting**. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under §300.520(b).	
3.c. (4) Correcting deficiencies	(f) **Deficiencies in IEP or placement**. If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. (Authority: 20 U.S.C. 1415(k)(4))	
3.d. Determination behavior not a manifestation	**§300.524 Determination that behavior was not manifestation of disability.**	
3.d. (1) General	(a) **General**. If the result of the review described in §300.523 is a determination, consistent with §300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in §300.121(d).	

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May 18, 2000 (Effective July 1, 2000)
DISCIPLINE PROCEDURES SECTION 300. OF FED. REGS /MANUAL

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3.d. (2) Transmittal of records	(b) **Additional requirement**. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.	
3.d. (3) Status during due process	(c) **Child's status during due process proceedings**. Except as provided in §300.526, §300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in §300.523, that the behavior of the child was not a manifestation of the child's disability. (Authority: 20 U.S.C. 1415(k)(5))	
4. Parent appeal	**§300.525 Parent appeal.** (a) General.	
4.a. Request appeal	(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§300.520-300.528, the parent may request a hearing.	
4.b. Expedited hearing	(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent. (b) Review of decision.	
4.c. Review of determination	(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of §300.523(d).	
4.d. Standards	(2) In reviewing a decision under §300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in §300.521. (Authority: 20 U.S.C. 1415(k)(6))	

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5. Placement during appeals	**§300.526 Placement during appeals.**	
5.a. General	(a) **General**. If a parent requests a hearing or an appeal regarding a disciplinary action described in §300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in §300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.	
5.b. Current placement	(b) **Current placement**. If a child is placed in an interim alternative educational setting pursuant to §300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.	
5.c. Expedited hearing	(c) **Expedited hearing**. (1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing. (2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §300.521. (3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days. (4) The procedure in paragraph (c) of this section may be repeated, as necessary. (Authority: 20 U.S.C. 1415(k)(7))	

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6. Protections for children not yet eligible	**§300.527 Protections for children not yet eligible for special education and related services.**	
6.a. General	(a) **General**. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.	
6.b. Basis of knowledge	(b) **Basis of knowledge**. An LEA must be deemed to have knowledge that a child is a child with a disability if - (1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services; (2) The behavior or performance of the child demonstrates the need for these services, in accordance with §300.7; (3) The parent of the child has requested an evaluation of the child pursuant to §§300.530-300.536; or (4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.	
6.c.-Exception	(c) **Exception**. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency— (1) Either—	

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	(i) Conducted an evaluation under §§300.530-300.536, and determined that the child was not a child with a disability under this part; or (ii) Determined that an evaluation was not necessary; and (2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with §300.503.	
6.d. Conditions that apply if no basis of knowledge	(d) **Conditions that apply if no basis of knowledge.** (1) **General.** If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section. (2) **Limitations.** (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.520 or 300.521, the evaluation must be conducted in an expedited manner. (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§300.520-300.529 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(8))	

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7. Expedited due process hearings	**§300.528 Expedited due process hearings.** (a) Expedited due process hearings under §§300.521-300.526 must— (1) Meet the requirements of §300.509, except that a State may provide that the time periods identified in §§300.509(a)(3) and §300.509(b) for purposes of expedited due process hearings under §§300.521-300.526 are not less than two business days; and (2) Be conducted by a due process hearing officer who satisfies the requirements of §300.508. (b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions. (2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies. (c) A State may establish different procedural rules for expedited hearings under §§300.521-300.526 than it has established for due process hearings under §300.507. (d) The decisions on expedited due process hearings are appealable consistent with §300.510. (Authority: 20 U.S.C. 1415(k)(2), (6), (7))	
8. Referral to law enforcement	**§300.529 Referral to and action by law enforcement and judicial authorities.**	12.2. Expedited Due Process Hearings 12.2.1. An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

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	(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(9))	12.2.2. Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows: 12.2.2.1. Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing. 12.2.2.2. At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
9. Corporal punishment		**Delaware Code.** **§701. Authority of teachers and administrators to administer corporal punishment.** Every teacher and administrator in the public schools of this State shall have the right to exercise the same authority as to control behavior and discipline over any pupil during any school activity as the parents or guardians may exercise over such pupils. The above authority may include corporal punishment where deemed necessary. Where corporal punishment is deemed necessary, it may be administered by any public school teacher or administrator in accordance with district board of education policy. (14 Del. C. 1953, § 701; 57 Del. Laws, c. 383; 60 Del. Laws, c. 662, § 1.) 12.3. Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting

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		the proposed corporal punishment is related to, or a manifestation of, the child's disability. 12.3.1. If the misconduct is related to, or a manifestation of the child's disability, any discipline shall be in accordance with the child's IEP 12.3.2. If the misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.
10. Written notice		12.4. Written Notice The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

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H.	**§300.515 SURROGATE PARENTS.**	**H. EDUCATIONAL SURROGATE PARENTS**
1. General	(a) **General**. Each public agency shall ensure that the rights of a child are protected if—	13.0. Educational Surrogate Parent: An "Educational Surrogate Parent" (hereinafter referred to as "Surrogate Parent", is appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.
	(1) No parent (as defined in §300.20) can be identified;	*Delaware Code.* *§3132. Surrogate parents.* ***The Department, with the approval of the State Board of Education, shall establish and maintain procedures to protect the rights of a handicapped child whenever the parents of the child are not known, unavailable or the child is a ward of the State, including the assignment of an individual, and shall not be an employee of any public agency involved in the education or care of the child, to act as a surrogate parent for the child. The surrogate parent shall exercise and be accorded all rights of a parent to assure the provision of a free, appropriate, public education to the child. (64 Del. Laws §1;71 Del. Laws, c. 180, §154.)***
	(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or	
	(3) The child is a ward of the State under the laws of that State.	
	(b) **Duty of public agency**. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method—	
	(1) For determining whether a child needs a surrogate parent; and	
	(2) For assigning a surrogate parent to the child.	
	(c) **Criteria for selection of surrogates**. (1) The public agency may select a surrogate parent in any way permitted under State law.	

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	(2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate— (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; (ii) Has no interest that conflicts with the interest of the child he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child. (3) A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section. (d) **Non-employee requirement; compensation**. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. (e) **Responsibilities**. The surrogate parent may represent the child in all matters relating to— (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child. (Authority: 20 U.S.C. 1415(b)(2))	
2. Determination of children requiring surrogate parent		13.1. A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist: 13.1.1. a parent cannot be identified;

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	BEST COPY AVAILABLE	13.1.2. after reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address; 13.1.3. parental rights have been terminated and legal responsibility has not been granted by a court of law to an individual, not to include a State agency, and the child has not been adopted; or 13.1.4. the child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education. 13.2. A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent. 13.3. An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include: 13.3.1. the right of access to a surrogate parent who shall act as an advisor to the student; 13.3.2. the right to refuse the appointment of a surrogate parent; 13.3.3. the right to participate in the selection of a surrogate parent; and 13.3.4. the right to terminate the services of a duly appointed surrogate parent.

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		13.3.5. To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.
3. Nomination & candidacy of surrogate parent		13.4. Nomination And Candidacy Of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve. 13.5. Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements. 13.6. To serve as a surrogate parent, each candidate shall: 13.6.1. be at least 18 years of age; 13.6.2. be a legal resident of the United States; 13.6.3. be competent to represent the child; 13.6.4. not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement; 13.6.5. have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if he/she were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for

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		the child;
		13.6.6. receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and
		13.6.7. be able to converse in the primary communication mode used by the child, whenever possible.
4. Training for surrogate parent		13.7. Training For Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually. 13.7.1. The Department of Education-shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training. 13.7.2. The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents. 13.7.3. Follow-up training shall be provided by the Department of Education.
5. Appointment of surrogate parent		13.8. Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the supervisor of special education in the district in which the child will receive or is receiving special education. 13.8.1. The Department of Education shall determine the child's eligibility for a surrogate parent.

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		13.8.2. The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child. 13.8.3. The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment. 13.8.4. A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four-children.
6. Responsibilities, tenure and compensation		13.9. Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by: 13.9.1. becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs; 13.9.2. granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

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		13.9.3. participating in the development of an IEP for the child; 13.9.4. reviewing and evaluating special education programs pertaining to the child and other such programs as may be available; 13.9.5. initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such assistance is in the best interest of the child; and 13.9.6. taking part in training provided to become familiar with State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.
7. Tenure of surrogate parents		13.10. The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met. 13.11. Termination of services of a surrogate parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

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		13.11.1. The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.
8. Compensation		13.12. Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to: 13.12.1. mileage for attendance at meetings concerning the child being represented; 13.12.2. long-distance telephone calls to the school in which the child is being served; and 13.12.3. photocopying of the child 's records.
9. Liability of the surrogate parent	**§300.516 [Reserved]**	13.13. Liability Of The Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

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Regulations of the Dept. of Ed. 925 – Children with Disabilities

I.

§300.517 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

(a) **General**. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the student; and

(2) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.

(b) **Special rule**. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.

(Authority: 20 U.S.C. 1415(m))

DOE Note: *See Section E.9., IEP, Transfer of Rights*

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Subpart E—Procedural Safeguards

J.

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

1. General responsibility definition

§300.500 General responsibility of public agencies; definitions.

(a) **Responsibility of SEA and other public agencies.** Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500-300.529.

(b) **Definitions of "consent," "evaluation," and "personally identifiable."** As used in this part—

1.a. Consent

(1) **Consent** means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

1.b. Evaluation

(2) **Evaluation** means procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and

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1.c. Personally identifiable	(3) **Personally identifiable** means that information includes— (i) The name of the child, the child's parent, or other family member; (ii) The address of the child; (iii) A personal identifier, such as the child's social security number or student number; or (iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. (Authority: 20 U.S.C. 1415(a))	
2. Examine records/parent participation in meetings	**§300.501 Opportunity to examine records; parent participation in meetings.**	**OPPORTUNITY TO EXAMINE RECORDS AND EDUCATIONAL PROGRAM**
	(a) **General**. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.562- 300.569, an opportunity to—	***Delaware Code:*** ***§3130. Opportunity to examine records and educational program.*** ***(a) The parents of a handicapped child, either personally or through a representative, shall be afforded an opportunity to inspect and review all relevant records with respect to:*** ***(1) The identification, evaluation and educational program and placement of the child; and*** ***(2) The provision of a free, appropriate, public education to the child.*** ***(b) The parents shall have the right to obtain copies of all records, except the actual evaluation or examination instrument, described in subsection (a) of this section either without charge, or, at the discretion of the district or state agency, at a fee not to exceed actual cost. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.*** ***(c) The parents of a handicapped child shall have the right to visit and observe, either personally or through a representative, their child's current or proposed public educational program.***
2.a. Inspect/ review all records	(1) Inspect and review all education records with respect to—	

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	(i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child; and (2) Participate in meetings with respect to— (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child.	14.0. Procedural Safeguards
2.b. Notice to visit proposed placement		14.1. The district may require advance notice when parents or guardians wish to visit a proposed educational program.
2.c. Participation in meetings	(b) **Parent participation in meetings.** (1) Each public agency shall provide notice consistent with §300.345(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section. (2) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.	
2.d. Parent involvement in placement decisions	(c) **Parent involvement in placement decisions.** (1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.	

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	(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in §300.345(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §300.345(d). (5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English. (Authority: 20 U.S.C. 1414(f), 1415(b)(1))	*Delaware Code.* *§3131. Minutes of meetings.* ***Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a handicapped child's free, appropriate, public education, at the option of the parents of the handicapped child, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising his or its option under this section.***
3. Independent education evaluation	**§300.502 Independent educational evaluation.**	
3.a. General	(a) General.	
	(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.	

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	(2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.	
	(3) For the purposes of this part—	
	(i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and	
3.b. Evaluation at public expense	(ii) **Public expense** means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.301.	
	(b) **Parent right to evaluation at public expense**.	
	(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.	
	(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—	
	(i) Initiate a hearing under §300.507 to show that its evaluation is appropriate; or	
	(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.	
	(3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.	
	(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.	

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3.c. Parent initiated evaluations	(c) **Parent-initiated evaluations**. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation— (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) May be presented as evidence at a hearing under this subpart regarding that child.	
3.d. Request for evaluation by hearing officer	(d) **Requests for evaluations by hearing officers**. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.	
3.e. Agency criteria	(e) **Agency criteria**. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C. 1415(b)(1))	
	PRIOR NOTICE/PARENTAL CONSENT	
4. Prior notice/ parental consent	**§300.503 Prior notice by the public agency; content of notice.**	**WRITTEN NOTICE**

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
4.a. Prior written notice	(a) Notice.	***Delaware Code*** ***§3133. Notice required*** ***Written notice which meets the requirements under § 3134 of this title must be given to the parents of a handicapped child a reasonable time before any school district or state agency:*** ***(1) Proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of a free and appropriate public education to the child; or*** ***(2) Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free, appropriate, public education to the child.***
4.b. Reasonable time	(1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency— (i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under §300.505, the agency may give notice at the same time it requests parent consent.	14.2. Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.
4.c. Content of notice	(b) **Content of notice**. The notice required under paragraph (a) of this section must include— (1) A description of the action proposed or refused by the agency;	

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	(2) An explanation of why the agency proposes or refuses to take the action; (3) A description of any other options that the agency considered and the reasons why those options were rejected; (4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;	
		Delaware Code. *§ 3134. Contents of notice.* ***The notice under § 3133 of this title must include: safeguards available to the parents under this subchapter;*** ***(1) A full explanation of all of the procedural safeguards available to the parents under this subchapter;*** ***(2) A description of the action proposed or refused by the district or agency, an explanation of why the district or agency proposes or refuses to take the action, and a description of any options the district or agency considered and the reasons why those options were rejected;*** ***(3) A description of each evaluation procedure, test, record or report the district or agency uses as a basis for the proposal or refusal; and*** ***(4) A description of any other factors which are relevant to the district or agency is proposal or refusal.***
	(5) A description of any other factors that are relevant to the agency's proposal or refusal; (6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.	
4.d. Understandable language	(c) **Notice in understandable language.**	

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(1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

4.e. Native language of parent

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3), (4) and (c), 1414(b)(1))

5. Procedural safeguards notice

§300.504 Procedural safeguards notice.

5.a. General

(a) **General**. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child; and

(4) Upon receipt of a request for due process under §300.507.

5.b. Contents

(b) **Contents**. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under §§300.660-300.662 relating to—

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

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	(4) Access to educational records; (5) Opportunity to present complaints to initiate due process hearings; (6) The child's placement during pendency of due process proceedings; (7) Procedures for students who are subject to placement in an interim alternative educational setting; (8) Requirements for unilateral placement by parents of children in private schools at public expense; (9) Mediation; (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in that State); (12) Civil actions; (13) Attorneys' fees; and (14) The State complaint procedures under §§300.660- 300.662, including a description of how to file a complaint and the timelines under those procedures.	
5.c. Understandable language	(c) **Notice in understandable language**. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). (Authority: 20 U.S.C. 1415(d))	
5.d. Documentation		14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.
6. Parental consent	**§300.505 Parental consent.**	
6.a. General	(a) **General**. (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before— (i) Conducting an initial evaluation or reevaluation; and (ii) Initial provision of special education and related services to a child with a disability.	

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	(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.	
	(3) Parental consent is not required before—	
	(i) Reviewing existing data as part of an evaluation or a reevaluation; or	
	(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.	
6.b. Refusal	(b) **Refusal**. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§300.507-300.509, or the mediation procedures under §300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.	
6.c. Failure to respond	(c) **Failure to respond to request for reevaluation**.	
	(1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.	
	(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in §300.345(d).	
	(d) **Additional State consent requirements**. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.	
6.d. Limitation	(e) **Limitation**. A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.	
	(Authority: 20 U.S.C. 1415(b)(3); 1414(a)(1)(C) and (c)(3))	
7. Mediation	**§300.506 Mediation.**	

ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES
May 18, 2000 (Effective July 1, 2000)
PROCEDURAL SAFEGUARDS 300. SECTION OF FEDERAL REGS/MANUAL

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
7.a. General	(a) **General**. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in §300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under §§300.507 or 300.520-300.528.	14.4. Mediation of disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department of Education.
7.b. Requirements	(b) **Requirements**. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process- (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under §300.507, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2)(i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate. (3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section. (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.	14.4.1. The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context. 14.4.2. Parents may be accompanied and advised by individuals of their choice. 14.4.3. The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

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	(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.	14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parents' discretion.
	(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.	
	(c) **Impartiality of mediator**. (1) An individual who serves as a mediator under this part—	
	(i) May not be an employee of—	
	(A) Any LEA or any State agency described under §300.194; or	
	(B) An SEA that is providing direct services to a child who is the subject of the mediation process; and	
	(ii) Must not have a personal or professional conflict of interest.	
	(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.194 solely because he or she is paid by the agency to serve as a mediator.	
	(d) **Meeting to encourage mediation**.	
	(1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—	
	(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and	
	(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.	

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	(2) A public agency may not deny or delay a parent's right to a due process hearing under §300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section. (Authority: 20 U.S.C. 1415(e))	
8. Impartial due process	**§300.507 Impartial due process hearing; parent notice.**	15.0. DUE PROCESS PROCEDURES
8.a. General	(a) General.	***Delaware Code.*** ***§ 3135. Administrative hearing.*** ***(a) A parent, district or state agency may initiate a hearing concerning any right or entitlement conferred by this chapter.*** ***(b) A hearing is initiated by submission of a written request to the Secretary of Education.*** ***(c) The Secretary of Education, upon receipt of a request for hearing, shall appoint a hearing panel whose membership shall meet the requirements of § 3137 of this title.*** ***(d) The district or state agency shall inform the parent of any free or low-cost legal and other relevant services available in the area whenever:*** ***(1) The parent requests the information; or*** ***(2) A hearing is initiated pursuant to this section.***
8.b. Initiating a hearing	(1) A parent or a public agency may initiate a hearing on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).	15.1. Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.
8.c. Mediation availability.	(2) When a hearing is initiated under paragraph (a)(1) of this section, the public agency shall inform the parents of the availability of mediation described in §300.506.	
8.d. Low cost legal services	(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—	15.2. Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

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Delaware Code.

§ 3137. Hearing panel

a) A hearing panelist may not be:

- ***(1) A person who is an employee of a district or agency which is involved in the education or care of the child; or***
- ***(2) A person having a personal or professional interest which would conflict with his or her objectivity in the hearing.***

(b) The Secretary of Education shall maintain a list of the persons who serve as hearing panelists. The list must include a statement of the qualifications of each of those persons.

(c) All hearing panelists shall have successfully completed such training as may be required by the Secretary of Education to ensure the adequate knowledge and competent performance of panelists.

(d) Each panel shall consist of 3 panelists, appointed by the Secretary of Education on a rotating basis, as follows:

- ***(1) One attorney admitted to practice in the State:***
- ***(2) One educator knowledgeable in the field of special education and special educational programming;***
- ***(3) One lay person with demonstrated interest in the education of the handicapped included on an approved list compiled by the Advisory Council for Exceptional Citizens and submitted to the Secretary of Education.***

(e) The Department, with approval of the State Board of Education, shall promulgate regulations which, consistent with this subchapter, further define hearing procedures and the conduct of hearing panelists which shall include standards of competency, expertise and training for hearing panelists.

***Reviser's note.** – Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.*

***Effect of Amendments.** – 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in (b), (c), the introductory language of (d), and in (d(3)); and inserted "Department with approval of the" in (e).*

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8.e. Chairperson: Attorney		15.3. The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the Due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.
	(i) The parent requests the information; or (ii) The parent or the agency initiates a hearing under this section. (b) **Agency responsible for conducting hearing**. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.	
8.f. Parent notice	(c) **Parent notice to the public agency**. (1) **General**. The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section. (2) **Content of parent notice**. The notice required in paragraph (c)(1) of this section must include– (i) The name of the child; (ii) The address of the residence of the child; (iii) The name of the school the child is attending; (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and	

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	(v) A proposed resolution of the problem to the extent known and available to the parents at the time. (3) **Model form to assist parents**. Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section. (4) **Right to due process hearing**. A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section. (Authority: 20 U.S.C. 1415(b)(5), (b)(6), (b)(7), (b)(8), (e)(1) and (f)(1))	
9. Impartial hearing officer	**§300.508 Impartial hearing officer.**	
9.a. Exclusions	(a) A hearing may not be conducted— (1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.	
9.b. Payment	(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.	
9.c. Registry of impartial hearing officers.	(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. (Authority: 20 U.S.C. 1415(f)(3))	15.4. Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.
10. Hearing rights	**§300.509 Hearing rights.**	HEARING RIGHTS

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10.a. General	(a) **General**. Any party to a hearing conducted pursuant to §§300.507 or 300.520-300.528, or an appeal conducted pursuant to §300.510, has the right to—	***Delaware Code.*** ***§ 3138. Hearing rights; procedure*** ***(a) Any party to a hearing has the right to:*** ***(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;*** ***(2) Present evidence and confront and cross-examine adverse witnesses;*** ***(3) Compel the attendance of witnesses as authorized by § 3139 of this title;*** ***(4) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing;*** ***(5) Obtain a written or electronic verbatim record of the hearing, with the form of record supplied in the discretion of the Secretary of Education, at public expense;*** ***(6) Obtain a written decision which includes findings of fact and law.*** ***(b) Parents involved in hearings must be given the righ' to:*** ***(1) Have the child who is the subject of the hearing present; and*** ***(2) Open the hearing to the public.*** ***(c) The hearing panel shall ensure that parents who have requested a hearing have been advised of the procedural safeguards provided by this subchapter.*** ***(d) Any hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.*** ***(e) Any testimony presented at a hearing authorized by this section shall be under oath or affirmation.*** ***(f) Copies of all written decisions shall be provided to the Advisory Council for Exceptional Citizens after deleting any personally identifiable information.***
	(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;	15.5. The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

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	(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;	
10.b. Witness testimony	(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;	15.6. Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.
	(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and	
10.c. Written decision	(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.	15.7. The parents/guardian shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.
10.d. Disclosure of information	(b) **Additional disclosure of information.**	
	(1) At least 5 business days prior to a hearing conducted pursuant to §300.507(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.	
	(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.	
10.e. Parental rights at hearings	(c) **Parental rights at hearings**.	
	(1) Parents involved in hearings must be given the right to—	
	(i) Have the child who is the subject of the hearing present; and	
	(ii) Open the hearing to the public.	
	(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.	

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		Delaware Code ***§ 3139. Subpoenas.*** ***(a) Authority to issue subpoenas is conferred upon the Secretary of Education, or the Secretary's designee, in order to implement §3138(a)(3) of this title.*** ***(b) Upon the application of any party at least 12 days prior to hearing, a subpoena shall be issued requiring the attendance of the person or persons listed in the application.*** ***(c) If a person subpoenaed to attend a hearing fails to obey without reasonable cause, or if such a person in attendance refuses, without lawful excuse, to be examined or to answer pertinent questions, an application may be filed with the Family Court for an order directing such person to show cause why he should not appear or testify. Upon return of the rule, the Court shall examine such person under oath, and if the Court shall determine, after giving such person an opportunity to be heard, that he refused without legal excuse to attend or testify at the hearing, despite the subpoena, the Court may order such person to comply therewith. Any failure to obey the order may be punished as a contempt of the Family Court, pursuant to the Rules of the Family Court.***
	(d) **Findings and decision to advisory panel and general public**. The public agency, after deleting any personally identifiable information, shall—	
10.f. Decision	(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under §300.650; and (2) Make those findings and decisions available to the public. (Authority: 20 U.S.C. 1415(f)(2)and (h))	15.8. The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

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		15.9. The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of the three Delaware counties, that this information may be obtained through the Department of Education.
10.g. Timeline for hearing		15.10. The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.
		Delaware Code ***§ 3140. Burden of proof.*** ***The burden of proof and persuasion in any proceeding convened pursuant to § 3135 of this title shall be on the district or state agency which is a party to the proceeding.***
11. Finality of decision, appeal; review	**§300.510 Finality of decision; appeal; impartial review.**	FINALITY OF DECISION AND APPEAL
11.a. Finality of decision	(a) Finality of decision. A decision made in a hearing conducted pursuant to §§300.507 or 300.520-300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.512. (Authority: 20 U.S.C. 1415(i)(1)(A))	***Delaware Code*** ***§ 3141. Finality of decision.*** ***A decision made by a hearing panel under this subchapter is final, unless a party to the hearing brings a civil action under § 3142 of this title.***

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II.b. Appeal	(b) Appeal of decisions; impartial review. (1) General. If the hearing required by §300.507 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) SEA responsibility for review. If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall— (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.509 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.	***Delaware Code.*** ***§ 3142. Judicial review.*** ***(a) Any party aggrieved by the decision of the hearing panel may file a civil action in the Family Court. Such proceeding shall be initiated by the filing of a complaint within 30 days of the date of the decision.*** ***(b) In an action brought under this section, the Court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant such relief as the Court determines is appropriate.*** ***(c) The Secretary of Education, or the Secretary's designee, shall certify and file with the Court the record of the administrative hearing, which shall include all documents submitted, a transcript of all testimony, and the decision of the hearing panel.***

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11.c. Findings/decision to advisory panel/general public	(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, shall—	
	(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.650; and	
	(2) Make those findings and decisions available to the public.	
11.d. Finality of review	(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.512.	
	(Authority: 20 U.S.C. 1415(g); H. R. Rep. No. 94— 664, at p. 49 (1975))	
12. Timelines	**§300.511 Timelines and convenience of hearings and reviews.**	***Delaware Code.*** ***§ 3136. Timelines of administrative hearings.*** ***The Secretary of Education shall ensure that, not later than 45 days after receipt of a request for a hearing:*** ***A hearing is conducted;*** ***A final decision is reached in the hearing and*** ***A copy of the decision is mailed to each of the parties.*** ***The hearing panel, for good cause, may grant specific extensions of time beyond the 45 day limit at the request of either party; provided, however, that a final decision shall be reached and a copy of the decision mailed to each of the parties within 15 days of the date of the hearing, or, where applicable, within 15 days of the completion of post-hearing argument.***
	(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—	
	(1) A final decision is reached in the hearing; and	
	(2) A copy of the decision is mailed to each of the parties.	
	(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—	

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(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

13. Civil action

§300.512 Civil action.

(a) **General**. Any party aggrieved by the findings and decision made under §§300.507 or 300.520-300.528 who does not have the right to an appeal under §300.510(b), and any party aggrieved by the findings and decision under §300.510(b), has the right to bring a civil action with respect to the complaint presented pursuant to §300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) **Additional requirements**. In any action brought under paragraph (a) of this section, the court-

(1) Shall receive the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) **Jurisdiction of district courts**. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(d) **Rule of construction**. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2), (i)(3)(A), and 1415(l))

14. Attorney's fees

§300.513 Attorneys' fees.

(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b)(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) A court awards reasonable attorney's fees under section 615(i)(3) of the Act consistent with the following:

(1) **Determination of amount of attorneys' fees**. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(2) **Prohibition of attorneys' fees and related costs for certain services.**

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	(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if— (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (B) The offer is not accepted within 10 days; and (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506 that is conducted prior to the filing of a request for due process under §§300.507 or 300.520-300.528. (3) **Exception to prohibition on attorneys' fees and related costs**. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. (4) **Reduction of amount of attorneys' fees**. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that— (i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;	

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	(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with §300.507(c). (5) **Exception to reduction in amount of attorneys' fees**. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(3)(B)-(G))	
15. Child's status during proceedings	**§300.514 Child's status during proceedings.** (a) Except as provided in §300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.	*Delaware Code.* *§ 3143. Child's status during proceedings.* ***During the pendency of any administrative or judicial proceedings regarding a complaint, unless the district or state agency and parents of the child agree otherwise, the child involved in the complaint shall remain in his or her present educational placement.*** ***If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, shall be placed in the public school program until the completion of all proceedings.***

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	(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.	
16. Non-exclusivity of remedies	(Authority: 20 U.S.C. 1415(j))	15.11. Non-Exclusivity of Remedies: The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.
K. State complaint procedures	**STATE COMPLAINT PROCEDURES** **§300.660 Adoption Of State Complaint Procedures.** (a) **General**. Each SEA shall adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.662 by— (i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§300.660-300.662.	BEST COPY AVAILABLE

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	(b) **Remedies for denial of appropriate services**. In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:	
1. Compliance		
2. Non-compliance		15.12. Non-Compliance: When the finding indicates non-compliance, the following procedures shall be followed: 15.12.1. The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education. 15.12.1.1. If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.
	(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and (2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)	
3. Minimum complaint procedures	**§300.661 Minimum State Complaint Procedures.** (a) **Time limit; minimum procedures**. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to— (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;	

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	(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;	
	(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and	
	(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—	
	(i) Findings of fact and conclusions; and	15.12.1.2. A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.
	(ii) The reasons for the SEA's final decision.	15.13. Compliance: When the findings reveal full compliance, no further action shall be taken.
4. Implementation	(b) **Time extension; final decision; implementation**. The SEA's procedures described in paragraph (a) of this section also must—	
	(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and	
	(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—	
	(i) Technical assistance activities;	
	(ii) Negotiations; and	
	(iii) Corrective actions to achieve compliance.	
	(c) **Complaints filed under this section, and due process hearings under §§300.507 and 300.520-300.528**.	

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	(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties— (i) The hearing decision is binding; and (ii) The SEA must inform the complainant to that effect. (3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA. (Authority: 20 U.S.C. 1221e-3)	
5. Filing a complaint	**§300.662 Filing a complaint.** (a) An organization or individual may file a signed written complaint under the procedures described in §§300.660-300.661. (b) The complaint must include— (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and (2) The facts on which the statement is based.	
	(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a). (Authority: 20 U.S.C. 1221e-3)	15.14. Any complainant under this section shall file the complaint in writing with the Department of Education, P.O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

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		15.14.1. the name of the agency against which the complaint is filed; 15.14.2. a statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the provisions of this Manual; 15.14.3. the facts on which the statement is based; 15.14.4. the time frame in which the incident(s) occurred; 15.14.5. a description of the attempts made to resolve the issue(s) prior to filing this action; and 15.14.6. name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

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§300. 127 CONFIDENTIALITY OF INFORMATION

§300.127 Confidentiality of personally identifiable information.

(a) The State must have on file in detail the policies and procedures that the State has undertaken to ensure protection of the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act.

(b) The Secretary uses the criteria in §§300.560-300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(8)

Confidentiality of Information

1. Definitions

§300.560 Definitions.

As used in §§300.560-300.577 -

(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) *Education records* means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

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2. Notice to Parents

§300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of §300.127, including-

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	(1) A description of the extent that the notice is given in the native languages of the various population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information: (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR Part 99. (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))	
3. Access rights	**§300.562 Access rights.** (a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;	

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

4. Record of Access

§300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

5. Records on more than one child

§§300.564 Records on more than one child.

6. List of types/ locations of information

§§300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

7. Fees

§300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

8. Amendment of records

§300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under §300.568.

(Authority: 20 U.S.C. 1412(a)(8); 1417(cc))

9. Opportunity for a hearing

§300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

10. Result of hearing

§300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so

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inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must -

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the record of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

11. Hearing procedures

§300.570 Hearing procedures.

A hearing held under §300.568 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

12. Consent

§300.571 Consent.

(a) Except as to disclosures addressed in §300.529(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is -

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR Part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99.

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13. Parent refusal	(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))	16.0 Confidentiality of Student Records 16.1. Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either: 16.1.1. Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to affect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.
14. Safeguards	**§300.572 Safeguards.** (a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.	
14. (a) One official ensures confidentiality	(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.	
14. (b) Training	(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.127 and 34 CFR Part 99.	
14. (c) List of individuals with access	(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))	
15. Destruction of information	**§300.573 Destruction of Information.**	

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	(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))	
16. Children's rights	**§300.574 Children's rights.** (a) The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18. (c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.517, the rights regarding educational records in §§300.562-300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents. (Authority: 20 U.S.C. 1412(a)(8), 1417(c)	
17. Enforcement	**§300.575 Enforcement.** The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met. (Authority: 20 U.S.C. 1412(a)(8), 1417(c))	

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18. Disciplinary information	**§300.576 Disciplinary Information.** (a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled children. (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child. (Authority: 20 U.S.C. 1413(j))	

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M. HIGH SCHOOL DIPLOMAS OR CERTIFICATE OF HIGH SCHOOL COMPLETION

1. Diploma or Certificate of Completion

Delaware Code. Title 14
§ 152. State high school diploma requirements.

(a) Every student, before receiving a state high school diploma endorsed by the Department of Education on behalf of the State, shall, in addition to meeting State prescribed course requirements, also demonstrate a proficient level of performance relative to the state high school content standards on the assessments administered pursuant to §151(b) and (c) of this title. The Department, by regulation, shall define the level of individual performance necessary for a student to receive a state high school diploma. The Department, by regulation, may define a higher level of individual performance necessary for a student to receive a state distinguished achievement diploma. The requirements for a distinguished achievement diploma may, in addition to the level of performance established pursuant to this section, include other criteria.

(b) Nothing contained in subsection (a) of this section shall prevent the Department from establishing alternative assessments to determine whether students with disabilities who are candidates for graduation have reached the same proficient level of performance required on the assessments administered pursuant to§151(b) and (c) of this title by the Department for award of a state high school diploma. Any alternative assessments adopted by the Department shall be equally rigorous, valid, and reliable as the assessments administered pursuant to §151(b) and (c) of this title. Approval of any alternative assessment by the Department shall require the joint approval of the Secretary and the State Board of Education, who shall issue written findings supporting the Department's decision to approve an alternative assessment.

(c) Nothing contained in subsection (a) of this section shall prevent an individual school district, with approval of the Department, from establishing alternative assessments to determine whether regular students who are candidates for graduation have reached the same proficient level of performance required on the assessments

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		administered pursuant to 151(b) and (c) of this title by the Department for award of a state high school diploma. Any alternative assessments proposed by an individual district shall, prior to approval, be found by the Department to be equally rigorous, valid, and reliable as the assessments administered pursuant to § 151(b) and (c) of this title. Approval of any alternative assessment by the Department shall require the joint approval of the Secretary and the State Board of Education, who shall issue written findings supporting the Department's decision to approve an alternative assessment. Any district that receives such approval shall provide such continuing evidence of the alternative assessment's reliability and validity as the Secretary and State Board of Education shall require to ensure compliance with this subsection. *(d) A high school student who fails to achieve a proficient level of performance on the high school assessments required by §151(b) and (c) of this title shall be required to retake such assessments at least once in each succeeding year until such student achieves the established level of performance. A student who demonstrates a proficient level of performance on an alternative assessment approved by the Department pursuant to subsections (b) and (c) of this section shall be exempt from this requirement.* *(e) A local school district may establish a certificate of high school completion for issuance to a student who has successfully completed the high school graduation course credit requirements established by the State, or the district, if higher than the State, but who has failed to demonstrate the proficient level of performance established pursuant to subsections (a), (b) and (c) of this section.*
2. Written notice per graduation	**§300.122 Exception to FAPE for certain ages.** (3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.	

ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES

April 20, 2000 (effective July 1, 2000)

HIGH SCHOOL DIPLOMAS OR CERTIFICATES OF HIGH SCHOOL COMPLETION SECTION OF REGS/MANUAL

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	(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma. (iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.	
3. Continuing education		17.0 High School Graduation 17.1. Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.
4. Graduation process		17.2. Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred ***DOE Note:*** *See C.5.c., Requirement for reevaluation for students not graduating with a regular high school diploma.*

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N.	INTERAGENCY/SPECIAL PROGRAMS	INTERAGENCY/SPECIAL PROGRAMS
		Delaware Code Title 14, *§ 203 Special schools.* ***The Department with the approval of the State Board of Education and the school board of any local reorganized school district, either separately or jointly, may establish special schools for children who are in need of education not provided for in regular classes or schools. Such schools may include, but are not limited to, schools for persons who are physically impaired, seriously emotionally disturbed, autistic, or mentally handicapped, educable or trainable, or for persons who suffer hearing or speech impairment, or for persons who are truant or insubordinate.***
1. Interagency/ LRE		18.1. Interagency And Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, inter-district or interagency programs shall be considered within least restrictive environment requirements.
2. Interagency agreements		18.2. Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence. 18.2.1. The agreement may be initiated by the district, agency, or the DOE. 18.2.2. The DOE shall be a party to the agreement when the services are provided through a special school or program approved by the State Board of Education. 18.2.3. Each Interagency Agreement shall include the: 18.2.3.1. Title of the agreement;

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		18.2.3.2. Parties involved and their authority to provide special education and related services; 18.2.3.3. Purpose of the agreement; 18.2.3.4. Roles and responsibilities of each agency, including access to records and record transfer procedures, program implementation, dissemination, training activities, funding amounts and sources; 18.2.3.5. End date and reauthorization schedule; 18.2.3.6. Procedures to resolve disputes regarding program and fiscal issues; and 18.2.3.7. Signature and title of each party's authorized administrator.
3. Responsibility for placement in interagency programs		18.3. Responsibility For Placement In Interagency Programs 18.3.1. For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures, including: 18.3.1.1. Setting the date, time, and place of all meetings; 18.3.1.2. Chairing, designating, or agreeing upon a chairperson for all meetings; 18.3.1.3. Communicating the name of the child to be discussed; the date and place of meeting to individuals involved; and 18.3.1.4. Communicating recommendations of staffing to all appropriate staff. 18.3.2. When it is suspected the child's need for special education can only be met in an inter-district/ interagency program, then an IEP meeting shall be

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		arranged by the district of residence. The following procedures for an IEP meeting shall be followed. 18.3.2.1. Representatives of the inter-district/ interagency program shall participate in the IEP meeting. 18.3.2.2. A representative of the district of residence shall be a member of the child's IEP team. 18.3.2.3. Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's district of residence.
4. Special programs for children with a visual impairment		19.0. Special Programs For Children with a Visual Impairment: Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented in an interagency agreement.
5. Special programs for children who are deaf & hard of hearing		
6. Special programs for children who are deafblind		20.0. Special Programs For Children Who Are Deafblind: The Margaret S. Sterck School, Delaware School for the Deaf (DSD), located in the Christina School District, will have administrative responsibility for providing services to the deafblind program. 20.1. The Director and Coordinator of the Deafblind Program shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.
7. Special program for children with		21.0. Special Programs For Children with Autism:

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autism		*Delaware Code, Title 14, Chapter 13* ***§1332(f). Program for autistic pupils, special staff.*** ***(f) The Department, with the approval of the State Board of Education, shall adopt such rules and regulations to establish and provide for parent advisory committees, a peer review committee, a human rights committee, and appropriate liaisons with the Department of Health and Social Services. The Department with the approval of the State Board of Education, shall adopt such rules and regulations to establish and provide for an Autistic Program Monitoring Board, to be composed of no less than 7 members and which shall include 1 non-voting public representative nominated annually by the statewide parent advisory committee. Such representative shall not have any child enrolled in the program. The statewide Autistic Monitoring Review Board shall review at least annually the identification, evaluation and educational program and placement of each autistic pupil and the provision for a free appropriate public education to such pupils. Disputes within or between districts or agencies shall be resolved by this Board. Procedural safeguards guaranteed to autistic pupils, their parents or guardians and to local school districts or agencies shall not be diminished by this provision.*** *Effect of Amendments. – 71 Del. Laws, c. 180, inserted "Department with the approval of the" three times in (a) once in (c) and twice in (f); substituted "Department of Education" for "State Board of Education" twice in (d) and once in (e); and added "provided, that the State Board may review any objection to the Department's decision" to the end of the last sentences of (d) and (e).*
7.a. Definition		21.1. Definitions of terms applicable only to special programs for children with autism. 21.1.1. *Behavior Management Procedure* means any procedure used to modify the rate or form of a target behavior. 21.1.2. *Behavior Management Target* means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a

significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

21.1.3. *Emergency Intervention Procedure* means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression or property destruction identified in a behavioral intervention plan.

21.1.4. *Ethical Use* means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

21.1.5. *Informed Consent* means knowing and voluntary consent by the parent(s) based upon a thorough explanation by the program staff member supervising the individualized behavior management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the procedure at any time.

21.1.6. *Least Restrictive Procedure* means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

21.1.7. *School* means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

21.1.8. *Accepted Clinical Practice* means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support, as documented in peer-reviewed

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		journals or similar professional literature.
7.b. Statewide Monitoring Review Board		21.2. The Statewide Monitoring Review Board (SMRB): **RESERVED**

		RESERVED

		RESERVED

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7.c. Parent Advisory Committee		21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program. 21.3.1. The function of the PAC shall be to advise the local education agency on matters pertaining to the local center. 21.3.2. Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center. 21.3.3. When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.
7.d. Statewide Parent Advisory Committee		21.4. A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC. 21.4.1. The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program. 21.4.2. The establishment of bylaws for the SPAC shall be by vote of all of its eligible members. 21.4.3. A current statewide membership list shall be provided to all parents. 21.4.4. Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).
7.e. Peer Review Committee (PRC)		21.5. A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1. *Purpose*: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2. *Composition*: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3. *Operation*: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4. Peer Review Committee (PRC) Responsibilities

 21.5.4.1. The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. (See 21.7.1.)

  21.5.4.1.1. A quorum shall consist of a majority of the Committee.

  21.5.4.1.2. The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2. The PRC shall meet at least six times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3. The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4. The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5. The PRC shall review and evaluate the training and supervision of the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

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		21.5.4.5.1. The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review. 21.5.4.6. The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson. 21.5.4.6.1. These minutes shall be submitted within two weeks of each meeting. 21.5.4.6.2. An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.
7.f. Human Rights Committee (HRC)		21.6. A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board. 21.6.1. *Purpose:* The purpose of the HRC shall be to review the ethical and children's rights issues involved in the use of behavior management procedures to ensure their humane and proper application. 21.6.2. *Composition:* The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with

autism. No member of the HRC shall be a member of the PRC.

21.6.3. *Operation*: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4. Human Rights Committee Responsibilities

- 21.6.4.1. Whenever a school proposes to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.
  - 21.6.4.1.1. A quorum shall consist of a majority of the Committee.
  - 21.6.4.1.2. This review, however, may be held jointly with the PRC.
- 21.6.4.2. The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.
- 21.6.4.3. The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

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21.6.4.4. The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education, and the PRC chairperson.

- 21.6.4.4.1. These minutes shall be submitted within two weeks of each meeting.
- 21.6.4.4.2. An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

7.g. Responsibilities of PRC/HRC

21. 7. Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

- 21.7.1. Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:
  - 21.7.1.1. Without further PRC/HRC review during the year approved;
  - 21.7.1.2. Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or
  - 21.7.1.3. Only with prior case-by-case PRC and HRC (before-the-fact) review;
- 21.7.2. Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;
- 21.7.3. Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be

recommended:

21.7.3.1. For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2. For use with after-the-fact reporting to the PRC/HRC;

21.7.4. Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1. Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2. A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5. The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/HRC annual review at least one month prior to the review date.

21.7.51. At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6. Approve, before-the- fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7. Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

21.7.71. Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2. Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8. Have access to the educational records of any child with autism for purposes of 21.5.1. and 21.6.1. of this section.

21.7.8.1. A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9. Submit written Procedural Descriptions for Behavior Management and Emergency Interventions.

21.7.9.1. Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1. The annual date of review shall be announced by the HRC chairperson at least one month prior to the

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review date.

21.7.9.1.2. The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3. The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4. PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2. After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3. Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4. Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1. The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5. Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1. If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

21.7.9.5.2. The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3. Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6. Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

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21.7.9.6.1. If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2. Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7. Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1. Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2. Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8. Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

- 21.7.9.8.1. If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9. The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

- 21.7.9.9.1. Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.
- 21.7.9.9.2. The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10. Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 22.7.7.

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7.h. Private facilities		21.8. Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows: 21.8.1. Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families). 21.8.2. Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located. 21.8.2.1. Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education. 21.8.3. Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written PRC and HRC policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education. 21.8.4. Private facilities serving Delaware children with autism located in states, which require substituted judgment or other court order for the

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		use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.
7.i. Psychotropic medication		21.9. Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.
7.j. Liaison with DHSS		21.10. Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

O.

1. Children in private schools placed/referred by public agency

§300.133 Children in private schools.

Subpart D—Children in Private Schools

Children With Disabilities In Private Schools Placed Or Referred By Public Agencies

§300.400 Applicability of §§300.400-300.402.

Sections 300.401-300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B))

CHILDREN IN PRIVATE SCHOOLS

Delaware Code. Title 14.

§3124. Private placement with financial aid.

(a) Private placement with financial aid shall be granted only to a "complex or rare" disabled person defined as a person in the chronological age group 4 through 20 years inclusive, who is found to suffer from 2 or more of the defined disabilities, or who is so severely afflicted by a single disability that the total impact of the condition means that he or she cannot benefit from the regularly offered free appropriate public educational programs. The determination shall be made by a committee appointed by the local board of education for identification, placement, review and dismissal of disabled persons and by the Department of Education that no school district or other state agency has a suitable free and appropriate program of education for the particular person. Such private placement shall be in a school/institution approved by the Department of Education. The Department shall make the final determination concerning the designation of a person eligible under this definition.

(b) Disputes concerning the private placement of a child are subject to the hearing procedures set forth in §3135 of this title. Subject to the parties' right to appeal, the decision of the hearing panel appointed by the Secretary of Education is final and binding on all parties and the State Board of Education.

(c) "Financial aid" shall include maintenance, transportation and tuition as herein defined:

(1) "Maintenance" shall mean the cost for room and board at a residential institution or in a residence approved by the institution in which a person is enrolled. Maintenance does not include the cost of health care or treatment. Maintenance shall be provided on a 12-month basis in appropriate cases.

(2) "Transportation" or the reimbursement for transportation provided by the State for an eligible disabled person will be by the

most economically feasible means compatible with the person's disabling condition and approved under rules and regulations of the Department approved by the State Board of education and according to the following:

a. ***When the legal residence of a person receiving tuition assistance for private placement is within 60 miles (1 way) of the school or institution, the person shall be eligible for round trip transportation or a reimbursement for that transportation on a daily basis.***

b. ***When the legal residence of a person receiving tuition assistance for private placement is in excess of 60 miles but less than 100 miles from the school or institution, the person shall be eligible for transportation or a reimbursement for that transportation from his or her residence to the school or institution and return on a 1 round trip per week basis and on such other occasions as may be required because the school is not in session due to scheduled vacations or holidays of the school or institution.***

c. ***When the legal residence of a person receiving a tuition assistance for private placement is in excess of 100 miles from the school or institution, the person shall be eligible for transportation or a reimbursement for that transportation on the basis of 1 round trip per year from his or her residence to the school or institution and return and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution.***

(2) ***"Tuition" shall mean payment for instructional services, materials and supplies. Tuition does not include the cost of health care or treatment. Tuition shall be provided on a 12-month basis in appropriate cases.***

(3) ***The amount authorized for payment shall be the amounts charged by that institution for tuition or for program costs, transportation and maintenance in accordance with the definitions set forth herein.***

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		DOE Note: *Subsequent to the enactment of this* ***Del. Code*** *provision, the Supreme Court clarified that some health care and treatment services are within the scope of IDEA funding. Cedar Rapids Community School District v. Garrett, 119 S. Ct. 992 (1999..* **DOE Note:** *See IEP section in cases where transportation is considered a related service.*
I.a. State responsibility	**§300.401 Responsibility of State educational agency.** Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—	22.0. Students In Need Of Unique Educational Alternatives 22.1. Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources/programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs. 22.1.1. The Secretary of Education shall approve children for Unique Educational Alternative Support and the type of Unique Educational alternative support to be provided when such support is necessary to provide special education and related services to a child with a disability. 22.1.2. If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.
	(a) Is provided special education and related services—	22.1.3. Such approval of unique educational alternatives shall be for no more than a one-year period, ending no later than August 31 of the year in which the child is to be enrolled.
	(1) In conformance with an IEP that meets the requirements of §§300.340-300.350; and	

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	(2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part); and (c) Has all of the rights of a child with a disability who is served by a public agency. (Authority: 20 U.S.C. 1412(a)(10)(B))	
I.b. Interagency Collaborative Team (ICT)		22.2. To the extent authorized by the General Assembly in the Budget Act, the Department of Education shall convene the Interagency Collaborative Team (ICT) to review the expenditures for new placements of students in need of Unique Educational Alternatives. 22.2.1. The Interagency Collaborative Team (ICT) membership shall consist of: 22.2.1.1. Division Director, Division of Child Mental Health Services, DSCYF; 22.2.1.2. Division Director, Family Services of DSCYF; 22.2.1.3. Division Director, Division of Youth Rehabilitation Services of DSCYF; 22.2.1.4. Division Director, Division of Mental Retardation of DHSS; 22.2.1.5. Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS; 22.2.1.6. Director of the Office of the Budget, or designee; 22.2.1.7. Controller General or designee; 22.2.1.8. Director, Exceptional Children's Group, DOE, who will serve as Chair;

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22.2.1.9. Associate Secretary, Curriculum and Instructional Improvement, DOE.

22.2.2. A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to be their representative on the ICT only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

22.2.3. The Interagency Collaborative team (ICT) shall invite to its meetings: A representative of a responsible school district for the case under consideration; the parents of the child; and other persons the team believes can contribute to their deliberations.

22.2.4. The Interagency Collaborative Team shall:

22.2.4.1. Review existing assessments of new referrals:

22.2.4.2. Prescribe, if required, additional assessments for new referrals;

22.2.4.3. Review proposed treatment plans of new referrals;

22.2.4.4. Recommend alternatives for treatment plans of new referrals;

22.2.4.5. Coordinate interagency delivery of services;

22.2.4.6. Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

22.2.4.7. If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

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22.2.4.8. If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

22.2.5. The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

22.2.5.1. New referrals will be assessed in the interagency manner described above.

22.2.5.2. The ICT may accept and review cases initiated by other agencies, but in all cases, the school district of residence must be involved in the review.

22.2.5.3. Cases reviewed by the ICT will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

22.2.5.4. Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General

22.2.6. The ICT shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and the Controller General by February 15 of each year.

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I.c. ICT Criteria for review		22.3. Interagency Collaborative Team (ICT) Review Criteria 22.3.1. The Interagency Collaborative Team shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria: 22.3.1.1. A school district or other public agency support/program is either not available or is not adequate. 22.3.1.2. The school district certifies that the school district cannot meet the needs of the child with existing resources and/or program.
I.d. Procedures for Unique Educational Alternatives		22.4. Procedures for Districts Seeking to Place Students in Unique Educational Alternative Settings 22.4.1. The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting. 22.4.2. The chairperson of the Interagency Collaborative Team shall be contacted by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed. 22.4.3. The IEP team that includes district level representation shall meet and determine if the child's need for special education and related services cannot be met within the existing resources/programs available to the district.

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22.4.3.1. Representatives of all agencies involved with the child shall be invited to attend this meeting.

22.4.4. The district shall submit an application to the Chair of the ICT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs

22.4.5. The application will include:

- 22.4.5.1. Current and other relevant assessment information;
- 22.4.5.2. A historical summary of all placements and/or major interventions and support services that have been provided to the student;
- 22.4.5.3. A current IEP;
- 22.4.5.4. A concise statement of the needs that cannot be addressed through existing recourses or programs;
- 22.4.5.5. A list of all agencies and resources that are currently supporting the child and the family; and
- 22.4.5.6. An Interagency Release of Information Form.

22.5. Procedures for the ICT

- 22.5.1. The ICT shall review the application at its next monthly meeting;
- 22.5.2. Parents and representatives of all involved agencies shall be invited to participate in the meeting.

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22.5.3. Recommendations of the ICT shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The ICT may:

22.5.3.1. Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and/or review of additional programs/resources that the local team had not considered;

22.5.3.2. Request for additional information shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting, and as soon as the additional information is available, the case shall be brought back to the ICT for further review.

22.5.3.3. Recommend approval and agree that the child has needs that cannot be addressed through existing programs/resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

22.5.3.4. Recommend rejection and ask the local team to use existing programs/ resources to meet the educational needs of the children.

22.5.4. Final recommendations of the ICT shall be shared in writing with the school district, parents and other agency staff involved in the case within five business days.

22.5.4.1. If the recommendation is for approval, the local team shall develop

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		the specifics, including costs, of the Unique Educational Alternative. 22.5.4.2. The final plan, with costs, will be submitted to the Chair of the ICT. 22.5.4.3. The Chair shall submit the recommendations for approval to the Secretary of Education. 22.5.4.4. A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary of Education for final action. 22.5.4.5. The parent, district superintendent, the special education supervisor, and the director of any other involved agency will be notified in writing by the Secretary of Education, following the action.
I.c. Financial aide for Unique Educational Alternatives		22.6. Financial Aid For Unique Educational Alternatives 22.6.1. Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line. 22.6.1.1. The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school districts are recommended by the ICT. 22.6.2. Financial aid for children with disabilities approved for private placement by the

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		Department of Education shall include maintenance, transportation and tuition. 22.6.2.1. The Department of Education shall pay 85% of the private placement costs and the local school district shall pay 15% of the private placement costs. 22.6.2.2. The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the Delaware Code.
I.f. Independent placement by school district or agency		22.7. Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval. 22.7.1. Such an independent placement in a private or public out-of-state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.
I.g. School district/agency responsibility		22.8. School District/Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for consideration of a unique educational alternative, including a private placement. 22.8.1. District Certification and Documentation 22.8.1.1. The local school district certification that the child is eligible for private

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		placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education. 22.8.1.2. Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s). 22.8.1.3. Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the child's disability. 22.8.1.4. Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.
I.g.(1) Responsibility for IEP		22.9. Responsibility for Individualized Education Program 22.9.1. The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility. 22.9.2. The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility,

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		including individual or conference telephone calls. 22.9.3. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency. 22.9.4. If the private school or facility initiates and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.
I.g.(2) Resident district		22.9.5. District of Residence: The referring district and fiscal agency for a child in private placement is the child's district of residence. 22.9.6. Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.
I.h. Monitoring compliance	**§300.402 Implementation by State educational agency.** In implementing §300.401, the SEA shall— (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;	22.10. State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private programs, the Department of Education shall have the authority to: 22.10.1. Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires.

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		22.10.2. Develop regulations that define the standards by which private schools and facilities may be approved to serve students with disabilities, and a schedule for reevaluation.
1.i. Disseminate copies of standards	(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and	22.10.3. Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a student with a disability.
1.j. Participate in development and revision of State standards	(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (Authority: 20 U.S.C. 1412(a)(10)(B))	22.10.4. Provide an opportunity for those private schools or facilities to participate in the development and revision of State standards which apply to them.
2. Children enrolled when FAPE is at issue	**Children With Disabilities Enrolled By Their Parents in Private Schools When FAPE is at Issue** **§300.403 Placement of children by parents if FAPE is at issue.** (a) **General**. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with §§300.450-300.462. (b) **Disagreements about FAPE**. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§300.500-300.517. (c) **Reimbursement for private school placement**. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of	

or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) **Limitation on reimbursement**. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied -

(1) If -

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) **Exception**. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if -

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(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(10)(C))

3. Children enrolled by parents

Children With Disabilities Enrolled By Their Parents In Private Schools

§300.450 Definition of "private school children with disabilities."

As used in this part, **private school children with disabilities** means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.400-300.402.

(Authority: 20 U.S.C. 1412(a)(10)(A))

3.a. Childfind

§300.451 Child find for private school children with disabilities.

(a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA, in accordance with §§300.125 and 300.220. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

(b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

DOE Note: *See Identification, p. 7*

3.b. Provision of services

§300.452 Provision of services—basic requirement.

(a) **General**. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§300.453-300.462.

(b) **SEA Responsibility— services plan**. Each SEA shall ensure that, in accordance with paragraph (a) of this section and §§300.454-300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.

DOE Note: See Appendix A for sample Service Plan Form

(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

3.c. Expenditures

§300.453 Expenditures.

(a) **Formula**. To meet the requirement of §300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities—

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and

(2) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(b) **Child count**.

(1) Each LEA shall—

(i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with

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disabilities; and

(ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.

(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(c) **Expenditures for child find may not be considered**. Expenditures for child find activities described in §300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.

(d) **Additional services permissible**. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

(Authority: 20 U.S.C. 1412(a)(10)(A))

3.d. Services determined

§300.454 Services determined.

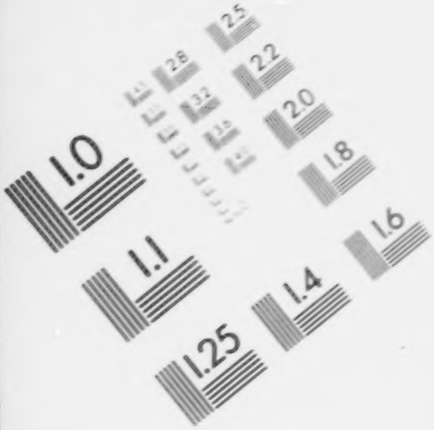
(a) No individual right to special education and related services.

(1) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(2) Decisions about the services that will be provided to private school children with disabilities under §§300.452-300.462, must be made in accordance with paragraphs (b), and (c) of this section.

(b) Consultation with representatives of private school children with disabilities.

(1) General. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under §300.453, the number of private school children with disabilities, the needs of private school children with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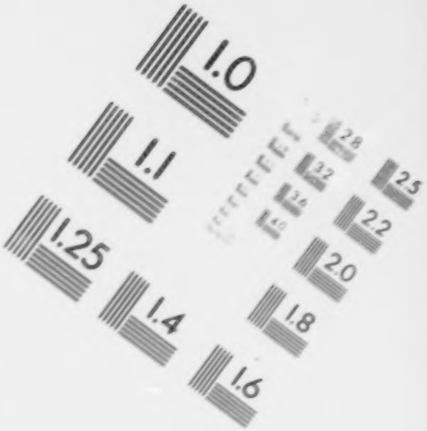
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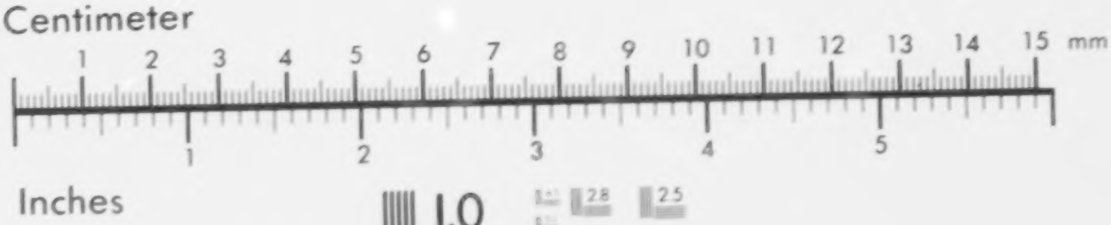
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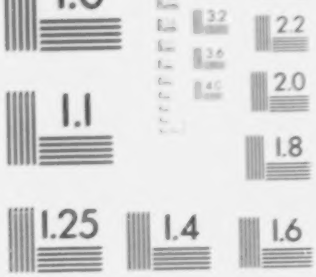
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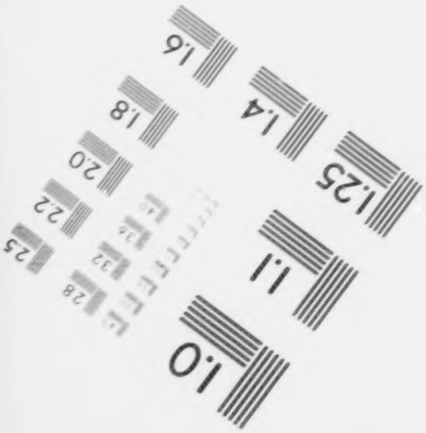
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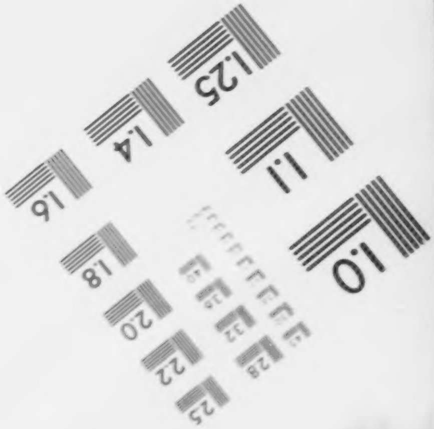
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disabilities, and their location to decide—

(i) Which children will receive services under §300.452;

(ii) What services will be provided;

(iii) How and where the services will be provided; and

(iv) How the services provided will be evaluated.

(2) Genuine opportunity. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(3) Timing. The consultation required by paragraph (b)(1) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§300.452-300.462.

(4) Decisions. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(c) Services plan for each child served under §§300.450-300.462. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.455(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 1412 (a)(10)(A))

3.e. Services provided

§300.455 Services provided.

(a) General.

(1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

(b) **Services provided in accordance with a services plan.**

(1) Each private school child with a disability who has been designated to receive services under §300.452 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.453-300.454, it will make available to private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of §300.347, with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with

§§300.342-300.346.

(Authority: 20 U.S.C. 1412(a)(10)(A))

3.f. Location of services, transportation

§300.456 Location of services; transportation.

(a) **On-site.** Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.

(b) **Transportation.**

(1) **General.**

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	(i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation— (A) From the child's school or the child's home to a site other than the private school; and (B) From the service site to the private school, or to the child's home, depending on the timing of the services. (ii) LEAs are not required to provide transportation from the child's home to the private school. (2) **Cost of transportation**. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.453. (Authority: 20 U.S.C. 1412(a)(10)(A))	
3.g. Complaints	**§300.457 Complaints.** (a) **Due process inapplicable**. The procedures in §§300.504-300.515 do not apply to complaints that an LEA has failed to meet the requirements of §§300.452-300.462, including the provision of services indicated on the child's services plan. (b) **Due process applicable**. The procedures in §§300.504-300.515 do apply to complaints that an LEA has failed to meet the requirements of §300.451, including the requirements of §§300.530-300.543. (c) **State complaints**. Complaints that an SEA or LEA has failed to meet the requirements of §§300.451-300.462 may be filed under the procedures in §§300.660-300.662. (Authority: 20 U.S.C. 1412(a)(10)(A))	
3.h. Separate classes prohibited	**§300.458 Separate classes prohibited.** An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment	BEST COPY AVAILABLE

ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES
May 18, 2000 (to be adopted July 1, 2000)
PRIVATE SCHOOLS /UNIQUE ALTERNATIVES 300. SECTION OF REGS/MANUAL

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	or religion of the students if— (a) The classes are at the same site; and (b) The classes include students enrolled in public schools and students enrolled in private schools. (Authority: 20 U.S.C. 1412(a)(10)(A))	
3.i. Requirement	**§300.459 Requirement that funds not benefit a private school.** (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. (b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for— (1) The needs of a private school; or (2) The general needs of the students enrolled in the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))	
3.j. Use of public school personnel	**§300.460 Use of public school personnel.** An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities— (a) To the extent necessary to provide services under §§300.450-300.462 for private school children with disabilities; and (b) If those services are not normally provided by the private school. (Authority: 20 U.S.C. 1412(a)(10)(A))	
3. k. Use of private school personnel	**§300.461 Use of private school personnel.**	

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An LEA may use funds available under sections 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.450-300.462 if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

3.L Property, equipment & supplies

§300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

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	(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (Authority: 20 U.S.C. 1412(a)(10)(A))	

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P.	**OTHER STATE AGENCY RESPONSIBILITIES**	
1. General supervision	**§300.141 SEA responsibility for general supervision.** (a) The State must have on file with the Secretary information that shows that the requirements of §300.600 are met. (b) The information described under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph. (Authority: 20 U.S.C. 1412(a)(11))	**OTHER STATE EDUCATION AGENCY (SEA) RESPONSIBILITIES**
2. Responsibility for all education programs	**§300.600 Responsibility for all educational programs.**	*Delaware Code, Title 14,* ***§3110 Rules and regulations.*** ***(a) The Department of Education is designated as the state agency that, with the approval of the State Board, shall make rules and regulations to carry out this and other titles relative to the identification, evaluation, education, training and transportation of exceptional persons including specific definitions for the categories of units for exceptional children authorized for funding in §1703 of this title.*** ***(b) The rules promulgated by the Department of Education, with the approval of the State Board of Education, shall provide the criteria by which identified handicapped persons, ages 3 through 20 inclusive, shall be assigned to a public school facility, or, if otherwise eligible for admission, to an institution of another state agency, or released for authorized placement in a private school or agency, pursuant to subchapter III of this chapter.*** ***(c) The Department of Education, with the approval of the State Board of Education, shall establish and maintain procedures, by regulations, to assure that handicapped children and their parents are guaranteed procedural safeguards with respect to the provision of a free, appropriate, public education.*** *Delaware Code, Title 14,* ***§3120 Right to receive public education.*** ***The State shall provide, in the school districts of the State, or in other state***

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	institutions and agencies or in special programs and private agencies as established or approved by the Department with the approval of the State Board, that each disabled person as defined in this chapter shall receive a free and appropriate public education designated to meet his or her needs. The Department of Education shall be the agency responsible for the implementation of this required provision.
	23.0. General Supervision Of Education For Children With Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.
(a) The SEA is responsible for ensuring—	23.1. Documentation of DOE activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:
(1) That the requirements of this part are carried out; and	23.1.1. General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.
(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency— (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the DOE; and (ii) Meets the education standards of the SEA (including the requirements of this part).	

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	(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents. (c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. (d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (Authority: 20 U.S.C. 1412(a)(11))	23.2 The DOE shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.
3. SEA implementation of procedural safeguards	**§300.143 SEA implementation of procedural safeguards.** The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to §300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. (Authority: 20 U.S.C. 1412(a)(11); 1415(a))	23.3. The DOE shall distribute the regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.
4. Suspension and expulsion rates	**§300.146 Suspension and expulsion rates.** The State must have on file with the Secretary information to demonstrate that the following requirements are met:	

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	(a) **General**. The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities - (1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within the agencies. (b) **Review and revision of policies**. If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (Authority: 20 U.S.C. 612(a)(22))	
5. Public participation	**§300.148 Public participation.** (a) *General; exception.* (1) Subject to paragraph (a)(2) of this section, each State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities consistent with §§300.280-300.284. (2) A State will be considered to have met paragraph (a)(1) of this section with regard to a policy or procedure needed to comply with this part if it can demonstrate that prior to the adoption of that policy or procedure, the policy or procedure was subjected to a public review and comment process that is required by the State for other purposes and is comparable to and consistent with the requirements of §§300.280-300.284. (b) *Documentation*. The State must have on file with the Secretary information to demonstrate that the requirements of paragraph (a) of this section are met.	

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(Authority: 20 U.S.C. 1412(a)(20))

§300.149 [Reserved]

5.a. Public hearings

§300.280 Public hearings before adopting State policies and procedures.

Prior to its adoption of State policies and procedures related to this part, the SEA shall—

(a) Make the policies and procedures available to the general public;

(b) Hold public hearings; and

(c) Provide an opportunity for comment by the general public on the policies and procedures.

(Authority: 20 U.S.C. 1412(a)(20))

5.b. Notice

§300.281 Notice.

(a) The SEA shall provide adequate notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about -

(1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;

(2) The availability of the State policies and procedures;

(3) The date, time, and location of each public hearing;

(4) The procedures for submitting written comments about the policies and procedures; and

(5) The timetable for submitting the policies and procedures to the Secretary for approval.

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	(c) The notice must be published or announced - (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate. (Authority: 20 U.S.C. 1412(a)(20))	
5.c. Opportunity to participate; comment period	**§300.282 Opportunity to participate; comment period.** (a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate. (b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under §300.281. (Authority: 20 U.S.C. 1412(a)(20))	
5.d. Review of public comment	**§300.283 Review of public comments before adopting policies and procedures.** Before adopting the policies and procedures, the SEA shall - (a) Review and consider all public comments; and (b) Make any necessary modifications in those policies and procedures. (Authority: 20 U.S.C. 1412(a)(20))	
5.e. Publication and availability of approved policies	**§300.284 Publication and availability of approved policies and procedures.** After the Secretary approves a State's policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any	

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	interested person. (Authority: 20 U.S.C. 1412(a)(20))	
6. Interagency Agreements	**§300.142 Methods of ensuring services.** (a) Establishing responsibility for services. The Chief Executive Officer or designee of that officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following: (1) Agency financial responsibility. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each non-educational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP). (2) Conditions and terms of reimbursement. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. (3) Interagency disputes. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism. (4) Coordination of services procedures. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.	*DOE Note:* *The DOE shall execute a written Interagency Agreement when educational programs are provided, or paid for, in collaboration with other State and/or local educational agencies to ensure that a free appropriate public education is provided to all children with disabilities who are served by more than one agency.*

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(b) Obligation of non-educational public agencies.

(1) General. (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.24 relating to related services, §300.28 relating to supplementary aids and services, and §300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(ii) A non-educational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) Reimbursement for services by non-educational public agency. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.

(c) Special rule. The requirements of paragraph (a) of this section may be met through—

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

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	(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.	
	(d) Information. The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.	
	(e) Children with disabilities who are covered by public insurance.	
	(1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (e)(2) of this section.	23.4. Nothing in the Individuals with Disabilities Education Act, as amended or in these regulations, shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.
	(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—	
	(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;	
	(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and	
	(iii) May not use a child's benefits under a public insurance program if that use would—	
	(A) Decrease available lifetime coverage or any other insured benefit;	
	(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;	
	(C) Increase premiums or lead to the discontinuation of insurance; or	

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(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (f) Children with disabilities who are covered by private insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.500(b)(1). (2) Each time the public agency proposes to access the parent's private insurance proceeds, it must— (i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (g) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts). (h) Proceeds from public or private insurance. (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.	

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	(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.154 and 300.231.	
	(i) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.	
	(Authority: 20 U.S.C. 1412(a)(12)(A), (B), and (C); 1401(8))	
7. Compliance Monitoring	**§300.556 Monitoring activities.**	23.5. Compliance Monitoring: The DOE shall fulfill a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:
	(a) The SEA shall carry out activities to ensure that §300.550 is implemented by each public agency.	23.5.1. Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.
	(b) If there is evidence that a public agency makes placements that are inconsistent with §300.550, the SEA shall—	23.5.2. Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.
	(1) Review the public agency's justification for its actions; and	23.5.3. Adoption and use of a method by which the DOE formally directs that each deficiency identified in program operations be corrected by the appropriate agency.
	(2) Assist in planning and implementing any necessary corrective action.	23.5.4. Adoption and use of a method by which the DOE enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or

(Authority: 20 U.S.C. 1412(a)(5))

contract; and, imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the DOE determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the DOE shall:

23.5.4.1. Make no further payments to the district or agency until the DOE is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2. Consider its decision in its review of any application made by the district or agency for IDEA-B payments;

23.5.4.3. Or both.

23.5.5. Any school district or other public agency receiving a notice from the DOE under 24.5.4. is subject to public notice provisions as required under 34 CFR 300.196.

23.5.6. If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

8. Scope of monitoring

23.6. Scope of Department of Education Complaint Monitoring Authority

23.6.1. The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including

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		collection and use of both off-site and on-site information. 23.6.2. The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations. 23.6.3. The State Secretary of Education shall have the authority to enforce legal obligations. 23.6.4. Department of Education standards relative to special education and related services are applicable to, and binding upon, all education programs for children with disabilities administered within the State.
9. Methods of monitoring		23.7. The Department of Education Methods of Monitoring shall include: 23.7.1. Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies; 23.7.2. Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements; 23.7.3. Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR). 23.7.4. Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted

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documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5. Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6. Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

23.7.7. Written documentation of each monitoring activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

2437.9. Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing of required.

23.7.10. Requirement of a written notice (for example, monitoring report, letter of findings) that:

  23.7.10.1. Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

  23.7.10.2. Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

23.7.11. Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12. Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

  23.7.12.1. The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

  23.7.12.2. Reasonable efforts have not resulted in voluntary compliance.

23.7.13. That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

  23.7.13.1. If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

  23.7.13.2. If the Department of Education conducts a hearing, the DOE shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

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		23.7.13.3. If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall: 23.13.3.1. Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan; 23.13.3.2. Disapprove any pending school district or other public agency Part B local application, when appropriate; 24313.3.3. Seek recovery of funds, and impose any other sanctions authorized by law.
10. CSPD	**§300.135 Comprehensive System of Personnel Development.** (a) **General**. The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that—	23.8. Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

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(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and (2) Meets the requirements for a State improvement plan relating to personnel development in section 653(b)(2)(B) and (c)(3)(D) of the Act. (b) **Information**. The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met. (Authority: 20 U.S.C. 1412(a)(14))	
§300.380 General CSPD requirements. (a) Each State shall develop and implement a comprehensive system of personnel development that— (1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act; (2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; (3) Meets the requirements of §§300.381 and 300.382; and (4) Is updated at least every five years.	
(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.	***DOE Note:*** *The Department has applied for a State Improvement Grant that addresses in detail the items in paragraph (a).*
(Authority: 20 U.S.C. 1412(a)(14))	23.8.1. The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

23.8.2. The results of the annual needs assessment shall be used in planning and providing personnel development programs.

23.8.3. The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

  23.8.3.1. The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

  23.8.3.2. Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

  23.8.3.3. Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

23.8.4. On-going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.

23.8.4.1. These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

23.8.5. The Department of Education coordinates and facilitates efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

23.8.6. The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300. 380.

23.8.7. The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the GACEC, and organization responsible for carrying out the programs.

23.8.7.1. Such dissemination includes each private school and facility to which a public agency has referred a children with a disability.

23.8.7.2. The Department of Education shall also disseminate information on significant

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		knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities. 23.8.7.3. The Department of Education shall be responsible for the following dissemination activities: 23.8.7.3.1. Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education; 23.8.7.3.2. Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs; and 23.8.7.3.3. Learning Resource System publications relative to current issues and promising practices.
11. Finance/Administration		23.9. Finance/Administration

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11.a. Child count		23.9.1. *Child Count Procedures*: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).
11.b. Administration of funds		23.9.2. *Administration of Funds*: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the Delaware Code.
11.c. Review of LEA application		23.9.3. *Review of LEA Application*: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application. 23.9.3.1. Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved. 23.9.3.2. All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application. 23.9.3.3. In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.
11.c.(1) Hearing application	**§300.144 Hearings relating to LEA eligibility.**	23.9.3.4. If, after a hearing, the district or agency application is found to be unapprovable, the district or agency

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ADMINISTRATIVE MANUAL FOR SPECIAL EDUCATION SERVICES
May 18, 2000 (to be adopted July 1, 2000)
OTHER STATE AGENCY RESPONSIBILITIES 300. SECTION OF REGS/MANUAL

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	may appeal this finding to the Secretary, U.S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.
The State must have on file with the Secretary procedures to ensure that the SEA does not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).	23.9.3.5. The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.
(Authority: 20 U.S.C. 1412(a)(13))	23.9.3.6. An applicant from a district or agency shall include the following information: 23.9.3.6.1. A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools. 23.9.3.6.2. The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program. 23.9.3.6.3. The basis the applicant used to select the children. 23.9.3.6.4. The manner and extent to which the applicant complied with the Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE).

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		23.9.3.6.5. The places and times the children will receive benefits under the program. 23.9.3.6.6. The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.
11.c(2) Recovery of funds	**§300.145 Recovery of funds for misclassified children.** The State must have on file with the Secretary policies and procedures that ensure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act. (Authority: 20 U.S.C. 1221e-3(a)(1))	23.9.4. Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education. 23.9.4.1. The specific procedures used in order to authenticate the count of children will be found in *The Monitor's Handbook for the September audit and Site Monitoring*. 23.9.4.2. The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation for each child determined to have been misclassified. 23.9.4.3. Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only occur during the September 30 audit of State units, but

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		during all other IDEA monitoring and evaluation on-site visits as well.
12. Other SEA responsibilities **12.a. Ensure adequate evaluation**		23.10. Other SEA Responsibilities 23.10.1. Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall: 23.10.1.1. Incorporate within its Comprehensive Compliance Monitoring System (CCMS) process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies; 23.10.1.2. Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process; 23.10.1.3. Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

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Q.	**STATE ADVISORY PANEL**	
1. General	**§300.650 Establishment of advisory panels.** (a) Each State shall establish and maintain, in accordance with §§300.650-300.653, a State advisory panel on the education of children with disabilities. (b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments. (c) If a State has an existing advisory panel that can perform the functions in §300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§300.650-300.653, instead of establishing a new advisory panel. (Authority: 20 U.S.C. 1412(a)(21)A))	*Delaware Code.* *§3111. Advisory council for exceptional citizens.* ***The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 [20 U.S.C. §1400 et seq.].*** ***DOE Note*** *The Advisory Council for Exceptional Citizens has been appointed as the advisory council to DOE.*
2. Membership	**§300.651 Membership.** (a) **General**. The membership of the State advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including - (1) Parents of children with disabilities; (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel;	

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	(5) State and local education officials; (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and (10) Representatives from the State juvenile and adult corrections agencies. (b) **Special rule**. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities. (Authority: 20 U.S.C. 1412(a)(21)(B) and (C))	
3. Functions	**§300.652 Advisory panel functions.** (a) **General**. The State advisory panel shall— (1) Advise the SEA of unmet needs within the State in the education of children with disabilities; (2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (3) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (4) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (5) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.	

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	(b) **Advising on eligible students with disabilities in adult prisons**. The advisory panel also shall advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with §300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA.	
	(Authority: 20 U.S.C. 1412(a)(21)(D))	
4. Procedures	**§300.653 Advisory panel procedures.**	
	(a) The advisory panel shall meet as often as necessary to conduct its business.	
4.a. Annual Report	(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.	
4.b. Official minutes	(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.	
	(d) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.	
	(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under §300.620.	
4.c. Compensation	(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under §300.620 for this purpose.	
	(Authority: 20 U.S.C. 1412(a)(21))	

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§300.150 State advisory panel.

The State must have on file with the Secretary information to demonstrate that the State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State in accordance with the requirements of §§300.650-300.653.

(Authority: 20 U.S.C. 1412(a)(21)(A))

§300.151 [Reserved]

R.	FUNDING	**FUNDING ISSUES FOR CHILDREN WITH DISABILITIES**
1. Reimbursement under unit system		24.0 Funding Issues for Children with Disabilities 24.1. Reimbursement Under The Unit System: Eligibility of the local educational agencies to receive reimbursement under the unit system is contingent upon: 24.1.1. The proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and Sections 2.0. 3.0., and 4.0. of these regulations; and 24.1.2. A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count. ***Delaware Code.** Title 14,* ***§1703. Unit of pupils.*** ***...Classes for partially sighted, 1 unit for 10 children, except that, even though the pupil count may be less than otherwise required by this chapter, there shall be a minimum of 1 class for partially sighted in each county... When classes for the blind are established as approved by the Department of Education with the approval of the State Board of Education and the Delaware Commission for the Blind, the unit for classes for the blind shall be 8. When classes for deaf-blind are established, as approved by the Department of Education with the approval of the State Board of Education, the unit for these classes shall be 4... Because of the very low incidence of persons who are deaf-blind, school districts may, with the approval of the State Department of Education, aggregate the enrollment of such deaf-blind persons among a combination of school districts for the purpose of establishing a unit, except that even though the pupil count may be less than otherwise required by this chapter, there shall be a minimum of 1 such unit for the deaf-blind in each county...***

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	Delaware Code, Title 14, § 1703. Unit of Pupils. ***(b) All such units must be authorized by the Department of Education under rules and regulations promulgated by the Department.*** ***Whenever more than 1 unit of pupils is authorized in a district in a given category, the first unit shall be a full unit. Only the last unit in any category may be a major fraction.*** ***(d) In the cases of exceptional children the following conditions for the calculations of the number of units shall prevail: classes for the educable mentally handicapped, 1 unit for 15 children; classes for the trainable mentally handicapped and severely mentally handicapped, 1 unit for 6 children; classes for the seriously emotionally disturbed, 1 unit for 10 children; classes for the partially sighted, 1 unit for 10 children, except that even though the pupil count may be less than otherwise required by this chapter, there shall be a minimum of 1 class for the partially sighted in each county; classes for the physically impaired or orthopedically disabled; 1 unit for 6 children; classes for the partially deaf or hard of hearing, 1 unit for 6 children; classes for the partially deaf or hard of hearing, 1 unit for 6 children; classes for autistic children, 1 unit for 4 children. When classes for the blind are established as approved by the Department of Education with the approval of the State Board of Education and the Delaware Commission for the Blind, the unit for classes for the blind shall be 8. When classes for the deafblind are established as approved by the Department of Education with the approval of the State Board of Education, the unit for these classes shall be 4. For those children in the classification designated as having "learning disabilities" the unit shall be 8. For a person identified as an "intensive learning center pupil" and assigned to an intensive learning center or intensive learning center program approved by the Department of Education with the approval of the State Board of Education, the unit shall be 8.6. A major fraction shall be considered a unit and shall consist of any fraction greater than one half. The number of children mentioned in this paragraph shall not be counted any other calculation of units.*** ***(e) Programs shall be conducted on a 12-month schedule for children who are identified as severely mentally handicapped or autistic or deaf-blind or orthopedically disabled, limited to traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Such programs shall not exceed 217 pupil days and 222 teacher days in length except that in the case of programs for autistic children a school district may extend pupil days to 241. Enrollment of pupils beyond 180 days per year in any such program will be***

on a voluntary basis upon application by the parent, guardian or other person legally responsible for the enrollee. The state share of the salary paid to teachers for the number of units authorized in accordance with the rules and regulations of the Department of Education during the 11th and 12th months shall be at the rate of the number of days employed multiplied by 1/185 of the particular teacher's entitlement for a regular school year.

(j) Programs shall be conducted on a 12-month schedule for children who are identified as trainable mentally handicapped. Such programs shall not exceed 217 pupil days and 222 teacher days in length. Enrollment of pupils beyond 180 days per year in any such program will be on a voluntary basis upon application by the parent. The state share of the salary paid to teachers for the number of units authorized in accordance with the rules and regulations of the Department of Education during the eleventh and twelfth months shall be at the rate of number of days employed multiplied by 1/185 of the particular teacher's entitlement for a regular school year.

(k) In the case of children at the pre-kindergarten ages who are partially deaf or hard of hearing, programs of instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education as authorized in § 203 of this title, that will provide special education and training for these children and their parents. The minimum age described in § 3101 of this title shall not be applicable to children served under this section. "Unit" or "unit of pupils" shall mean 6 children per unit. Units so established shall be based upon statewide needs and the program shall be an integral part of the Margaret S. Sterck School for Hearing Impaired. Time spent with each child each week may approximate the time devoted to kindergarten programs.

(l) In the case of persons, infant through age 20 inclusive, who are autistic, programs of instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education as authorized in § 203 of this title, that will provide special education and training. Programs for children of the pre-kindergarten ages may include the parents of those children. The minimum age described in § 3101 of this title shall not be applicable to children served under this subsection. "Unit" or "unit of pupils" shall mean 4 autistic persons per unit. Because of the low incidence of persons who are autistic, school districts may, with the approval of the State Department of Education, aggregate the enrollments of such autistic persons among a combination of school districts for the purpose of establishing a unit. A unit so established shall be assigned to 1 of the school districts and the

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enrollees so counted shall not be counted in any other school district. An enrollee so counted may be served by either a teacher in the district counting the enrollee when the enrollee is transported to that district, or in the district of residence by an itinerant teacher sent there by the district authorized to count the unit. Enrollments may also be aggregated by combinations of school districts for the purpose of supporting related services specialists, or a director for statewide programs of related services or administration.

(m) In the case of persons, infant through age 20 inclusive, who are deaf-blind, programs of instruction may be prepared, according to rules and regulations of the Department of Education with the approval of the State Board of Education. Programs for children of the pre-kindergarten ages may include the parents of those children. The minimum age described in § 3101 of this title shall not be applicable to children served under this subsection. "Unit" or unit of pupils" shall mean 4 deaf-blind persons per unit. Because of the very low incidence of persons who are deaf-blind, school districts may, with the approval of the State Department of Education, aggregate the enrollments of such deaf-blind persons among a combination of school districts for the purpose of establishing a unit, except that even though the pupil count may be less than otherwise required by this chapter, there shall be a minimum of 1 such unit for the deaf-blind in each county. A unit so established shall be assigned for administrative purposes to 1 of the school districts involved and the enrollees so counted shall not be counted in any other school district. An enrollee so counted may be served by either a teacher in the district counting the enrollee when the enrollee is transported to that district or, in the district of residence by an itinerant teacher sent there by the district authorized to count the unit. Enrollments may also be aggregated by combinations of school districts for the purpose of supporting related services specialists, or a coordinator for the state or area-wide programs of related services or administration.

(n) In the case of developmentally delayed 3-year-old students and speech or language delayed 3 and 4-year old students as determined by the Department of Education with the approval of the State Board of Education, services shall be provided through an annual appropriation to the Department of Education specifically for that purpose. Such students shall not be included in the units authorized in subsection (d) of this section. For purposes of this subsection, "developmentally delayed" shall mean children age 3 who might otherwise be classified as learning disabled, seriously emotionally disturbed or educably mentally handicapped.

(o) Funds appropriated for the purpose of funding the units of pupils under

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		subsections (d), (e), (f) and (k) of this section shall not be expended for any other purpose. However, such appropriated funds may be used for directly related educational projects and/or programs if approved by the Department of Education, provided that the State Board may review any objection to such use.
2. Aides		24.2. Aide Positions for Services to Children with Disabilities (as authorized under 14 *Del. C.*, Section 1324). 24.2.1. All paraprofessionals in such positions shall work under the supervision of teachers. 24.2.2 The following positions may be authorized: 24.2.2.1. *Trainable Mental Disability Unit*: One classroom teacher, or in lieu of a teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days. 24.2.2.2. *Severe Mental Disability Unit*: One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days. 24.2.2.3. *Autism Unit*: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth

IDEA-Part B Regulations of March 12, 1999	Regulations of the Dept. of Ed. 925 – Children with Disabilities
	months shall be paid for two hundred twenty-two (222) days. 24.2.2.4. *Physical Impairment Unit*: One classroom teacher and either one aide or attendant may be employed per unit in any given special school. 24.2.2.5. *Hearing Impairment Unit*: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school. 24.2.2.6. *Deaf/Blindness Unit*: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days. 24.2.2.7. *Intensive Learning Center Unit*: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers. 24.2.3. The use and ratio of aides/attendants to teachers shall be dependent upon the rationale

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
		developed by the agency.
3. Nurses		24.3. School Nurses (as authorized by 14 *Del. C.*, Section 1310) 24.3.1. A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice. *Delaware Code, Title 14, § 1310. Salary schedules for school nurses.* ***(b) A reorganized school district may employ personnel to be paid for 10 months per year from state funds pursuant to this section in a number equal to 1 for each 40 state units of pupils, except that in schools for the physically handicapped within the district the allocation shall be in accordance with the rules and regulations adopted by the Department with the approval of the State Board of Education; provided further, that each reorganized school district shall ensure that it has at least 1 school nurse per facility.***
4. Related services		*Delaware Code, Title 14, §1716A. Related services unit and funding.* ***(a) "Related services unit" is defined for funding purposes as 1 funding unit for each 30 units of certain handicapped children identified and served in a school district, grades K through 12, excluding units for enrollees identified as autistic, severely mentally handicapped, deaf/blind, physically impaired and hearing impaired. Districts shall qualify for partial funding for a related services unit for a fractional part of 30 units.*** ***(b) Each pupil counted in establishing a unit for handicapped pupils may be counted only once in a district. For pupils who attend schools in more than 1 district during each school day, the pupil is to be counted in each school district for the portion of the day that he or she is in attendance there.*** ***(c) For purposes of this section, handicapped pupils shall include pupils meeting the definition set forth in Chapter 31 of this title, as further defined according to rules and regulations of the Department with approval of the State Board of Education.***

(d) "Related services" shall be special services provided for pupils because of their handicap and shall be defined in rules and regulations of the Department with approval of the State Board of Education. Rules and regulations may include, but are not limited to, such services as speech therapy, occupational therapy, physical therapy, early identification and assessment of disabilities, special counseling services, developmental, corrective or supportive services that may assist a handicapped child to benefit from special education. Medical services provided shall be for diagnostic or evaluation purposes only. Special transportation services provided from this funding shall be only those services unique to a particular handicap and shall be services provided during the school program and shall not include transportation to and from school.

(e) Funds appropriated in support of this unit may be used for expenditures under Division I or Division II for the purchase of assistive materials or services from persons or agencies to be used in support of students with disabilities herein authorized and for no other purpose.

(f) The dollar value of this unit, when applied to the employment of a full-time certified person such as, but not limited to, a teacher, a therapist or a specialist, shall be as provided in this title, but, when applied as herein authorized for other related services, shall be the number of dollars set in the state-supported salary schedule for a teacher holding a master's degree with 10 years of experience and employed for 10 months. The calculation of this funding shall be for the current school year. Expenditures on behalf of this unit when used for the purchase of services shall be up to but not in excess of the amount herein authorized.

(g) Funding authorized by this section shall be used to supplement regular school programs for handicapped pupils, and may provide for the assignment of 180 pupil days and 185 employment days described in § 1305(e) of this title to be assigned during any of the months of a 12-month fiscal year beginning July 1.

(h) Any school district wishing to use funds under any of the options set forth in this section shall make application to the Department of Education for that use; provided that the State Board may review any objection to the Department's decision. The application shall indicate that these funds are being used to supplement programs in the school district and that their use will not supplant personnel, services, supplies or materials provided from local funding sources.

	IDEA-Part B Regulations of March 12, 1999	*Regulations of the Dept. of Ed. 925 – Children with Disabilities*
		Revisor's note. – Section 2 of 70 Del. Laws, c. 118 provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency." Section 3 of 70 Del. Laws, c. 118, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby." Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997. **Effect of Amendments.** – 68 Del. Laws, c. 126 effective July 9, 1991, in (a) substituted "physically impaired" for "orthopedically handicapped." 70 Del. Laws, c. 118, effective July 1, 1995, in (e), inserted "assistive materials or" and substituted "students with disabilities" for "the handicapped children." 71 Del. Laws, c. 180, inserted "Department with approval of the" in (c) and (d); and, in the first sentence of (h), substituted "Department of Education" for State Board of Education" and added "provided, that the State Board may review any objection to the Department's decision."
5. Other positions for services to children with disabilities		***DOE Note:*** *See 1100.2 School transportation, for regulations on bus aides.* 24.4. Other Positions for Services to Children with Disabilities 24.4.1. Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice. 24.4.2. Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care. 24.4.3. An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10)

	IDEA-Part B Regulations of March 12, 1999	***Regulations of the Dept. of Ed. 925 – Children with Disabilities***
		units. 24.4.4. A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling. 24.4.5. Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

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3. Transition Agreement Between the Division of Mental Retardation (DMR) Department of Health & Social Services (DHSS) and the Division for Exceptional Children (DPI) (March 1992) B-1-1

4. Cooperative Agreement Between the Exceptional Children and Early Childhood Group, Vocational-Technical Education and School-to-Work Group, Student, Family and School Support Group/Department of Public Instruction, and Delaware School Districts and the Division of Vocational Rehabilitation/Department of Labor (May 6, 1997) B-1-1

5. Interagency Agreement Between the Division for the Visually Impaired (Department of Health and Social Services), Exceptional Children and Vocational-Technical Education Divisions (Department of Public Instruction) and Local Educational Agencies (LEAs) Serving Visually Impaired Children (February 1993) B-1-2

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APPENDIX A

Sample Forms

APPENDIX A

Individualized Education Program (IEP)

State of Delaware

Student Identification Information

Student Name ____________________

School ____________________

D.O.B. __/__/__ Grade ________

School Address ____________________

____

Student ID # ____________________

School Telephone ____________________

Student Address ____________________

____

Parent/Guardian/Surrogate ____________________

____

Telephone ____________________

Address ____________________

____

Disability ____________________

IEP Status

Initial Date ________ IEP Meeting Date ________ Revised Date ________

IEP Initiation Date ________ IEP Ending Date ________

IEP Initiation Date ________ IEP Ending Date ________

Temporary Placement Date ________

Assigned To: ________

Principal: ________

Parent: ________

Participants Attending IEP Team Meeting Of ____________________ (Date)

Name	Role	Signature
	Parent/Guardian/Surrogate	
	Student	
	General Education Teacher	
	Special Education Teacher	
	Administrator/Designee	

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Name: ______________________________ Date: ________________

Connecting All Data Sources to Identify the Needs of the Student

	Yes	No
Is the student visually impaired (including blindness)? If yes, the team must address whether there is a need for Braille or Braille instruction.		
Does the child have a communication delay/disorder? If yes, the team must address the students' language and/or communication needs.		
Does the student have limited English Proficiency? If yes, the team must address the language needs of the student.		
Is the student hard of hearing (including deafness)? If yes, the team must address full range of communication needs.		
Does the student exhibit behaviors that impede his or her learning or that of others? If yes, the team must develop strategies including positive behavior interventions and supports which are referenced in a Behavior Intervention Plan and/or in accommodations and/or goals and objectives.		
Does the student have assistive technology needs? If yes, the team must address under Accommodations and Supports.		

When developing the IEP consider the following:

- The strengths and concerns identified by the parent and, if appropriate, the student.
- The results of the district or statewide assessments.
- How the disability affects involvement and progress in the general education curriculum.
- Extracurricular and non-academic areas affected.
- Needed accommodations/modifications, services, including assistive technology and support for personnel.

Strengths:

Concerns & Needs:	**Accommodations, modifications, supports & services:**

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Name: ______________________________ Date: ______________

Goals with Benchmarks or Objectives

Measurable Annual Goal: ____

____

Method for Reporting Progress: Unless indicated otherwise, IEP goals and objectives will be reported with school report cards.

Schedule for Evaluation of Progress

Benchmarks or Objectives	Present Level of Performance	Date: ____ Progress	Date: ____ Progress	Date: ____ Progress	Date: ____ Progress

A-3

Therapist Signature______________________________ Date:______________________
(For Medicaid Cost Recovery)

Name: ______________________________ Date: ____________

Transition Services Planning: (Required Beginning at Age 14)

My Post-High School Goals Are:

Employment:	
Community Participation:	
Post-Secondary Education and Training:	
Independent Living:	

Courses of Study Leading to My Post-High School Goals Are:

Grade ______ Courses of Study: ______________________________

Grade ______ Courses of Study: ______________________________

Grade ______ Courses of Study: ______________________________

Grade ______ Courses of Study: ______________________________

HIGH SCHOOL PROGRAM: __________ Diploma __________ Certificate of Performance

Other Transition Services I will Need to Accomplish My Post-High School Goals Are:

Transition Services (if applicable)	Activities/Strategies	Agency/Responsibility
Community Experiences		
Employment and other Post-School Objectives		
Daily Living		
Functional Vocational Evaluation		
Other		

In Addition to Support from My School, I Will Need the Assistance of:

Agency	Contact Person	Phone Number

DOCUMENTATION OF OTHER AGENCY PARTICIPATION IF THEY DID NOT ATTEND:

DOCUMENTATION OF STUDENT PREFERENCES AND INTERESTS:

____ surveys/questionnaires ____ profiles/portfolios ____ vocational assessments ____ other

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Name: ______________________________ Date: ______________

Review of Assessment Data

Based on the progress the student is making, the IEP team recommends the following data be gathered before the next scheduled IEP meeting: This may include both standardized assessments such as a psychological or speech/language evaluation or more informal curriculum based evaluations done in the classroom.

____

____

____

____

Most recent Evaluation Report date __________ Next Evaluation Report Due __________

Parent permission has been obtained ___ Yes ___ No ___ N/A

Participation in Statewide or Districtwide Assessment

_____ Student participates in regular testing conditions with no accommodations.

_____ Student participates with accommodations as documented on the attached Accommodation Checklist.

_____ Student is included in Alternate Assessment. The Eligibility Guidelines form is attached and #64 is filled in on the Accommodation Checklist.

Transportation

Is it necessary to place this student, who is transported from the school by bus into the charge of a parent or other authorized responsible person? If yes, and not in attendance Transportation Supervisor will be notified by: ______________________. Yes ____ No ____

Additional transportation modifications are: ______________________________

Discipline

Student adheres to School Code of Conduct. If no, exception to the school code of conduct is indicated below: Yes ____ No ____

_____ Described under services/supports and/or in goals and objectives.

_____ Described in an attached behavior intervention plan.

_____ Described here.

____

____

Name: ______________________________ Date: ______________

Consideration of Need for Extended School Year Services (ESY)

Yes ____ No ____ To Be Determined ____

Considered factors:

Regression/Recoupment
Degree of Impairment
Extenuating Circumstances
Vocational Skills
Breakthrough Skills

Rationale for Decision:

____

____

____

Special Education Hours and Related Services

Special Education Services with Special Education Teacher	Related Services Area	Type*	Frequency	Units of Time
Hours/Week				

*Individual-"I" Group-"G" Consultative-"C"

Student/Parent Signatures

At least one year before reaching the age of majority (18) student has been informed that rights will transfer to him/her unless a legal guardian has been appointed.

1. I acknowledge that I have received a copy of the Procedural Safeguards. My due process rights under those Procedural Safeguards have been explained to me.
2. I agree/disagree(indicate one) with the program described in this document.

______________________________ Parent/Guardian/Surrogate/Student

______________ Date

If Parent Does Not Attend

Staff member below is responsible for forwarding a copy of the IEP and Procedural Safeguards and explaining content, if necessary to the Parent/Guardian/Surrogate.

______________________________ Name

______________________________ Position

Name: ____________________ Date: ____________

Least Restrictive Environment/Placement

Note: *Once a placement decision has been made, it is not necessary to address more restrictive settings. If "No" has been checked for a particular setting provide a rationale as to how the goals and objectives in this IEP could not be achieved in this setting and the extent to which the student will not participate with non-disabled peers in the regular setting.*

	Yes	No
Regular Setting (Includes pull-out related services and team classrooms) (Student served outside the regular classroom less than 21% of the day.)		
Services Provided Both In Separate Special Education Classes and Regular Setting (Student served outside the regular classroom at least 21% of the day and no more than 60% of the day.)		
Separate Special Education In An Integrated Setting (Student served outside the regular classroom more than 60% of the day.)		
Separate Setting (Student served in public separate day school facility for greater than 50% of the day.)		
Is student being served in home school? If no, provide a rationale why student is *not* in the home school.		

____

____

Parental Agreement to Placement

I agree/disagree (indicate one) with the placement decision as noted above and discussed at this meeting.

Parent/Guardian/Surrogate Parent Signature(s)

Date

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Name: ______________________________ Date: ______________

IEP Revision

Date of IEP Meeting __________

Need for Modification: ______________________________

____

Modification(s) to current IEP (Attach if necessary): ______________________________

____

Participants Attending IEP Team Meeting Of ______________ **(Date)**

Name	Role	Signature
	Parent/Guardian/Surrogate	
	Student	
	General Education Teacher	
	Special Education Teacher	
	Administrator/Designee	

Parental Signature

1. I acknowledge that I have received a copy of the Procedural Safeguards. My due process rights under those Procedural Safeguards have been explained to me.

2. I agree/disagree (indicate one) with the revisions to the current IEP as indicated above.

____
Parent/Guardian/Surrogate Signature(s)

____
Date

Name: ______________________________ Date: ______________

Strengths:

Concerns & Needs:	**Accommodations, modifications, supports & services:**

Student Identification Information

Basic demographic data is filled out in Section I. Because students and parents or guardians do not always have the same address, there are spaces for all.

IEP Status

Initial refers to the date of the first or initial IEP. A temporary IEP, which can be used for 30 days, is for those students who move into the district and previously receiving special education services.

IEP Team/Signature

The IEP team meets, discusses options and makes decisions concerning what will constitute an educationally appropriate individual education program for students.

A single member of the team may meet two or more of the qualifications but the IEP team may ***not*** *consist of fewer than two people in addition to the parents.*

Members of the IEP team shall include individuals who meet the following qualifications:

- *One or both of the student's parents*
- *The student should be invited as appropriate. Transition planning, required beginning at age 14, is a critical time in which students must be invited. Students at a younger age may attend if IEP team agrees.*
- *At least one special education teacher of the child*
- *At least one regular education teacher of the child if the student does or may participate in the regular education environment. For newly identified students, a regular education teacher who provides instruction to students of the same age must be a part of the team. For preschool children, teachers who are certified in early childhood special education may serve the dual role. However, for preschool children served in community placements, the regular educator must be invited to participate.*
- *A local education agency representative other than the student's teacher who:*
  - *is qualified to provide or supervise special education*
  - *is knowledgeable about the general curriculum*
  - *is knowledgeable about the availability of resources of the LEA*
  - *can insure that the services specified in the IEP will be provided*
- *An individual who can interpret the instructional implications of the evaluation results.*
- *Other individuals who might be invited include other public agencies who are likely to be involved in transition services or an individual who, at the discretion of the parent or agency, has an interest in the student and have knowledge or special expertise regarding the student such as individual with expertise in assistive technology.*
- *Transportation Supervisors need to be invited when additional transportation modifications are required.*

Signatures on the IEP only reflect attendance at the meeting, not agreement with the IEP. This section should be completed at the very beginning of the meeting.

Process Tip: Set the tone for a collaborative meeting by thanking participants for attending , make introductions and explain the agenda so that all members are beginning the meeting with the same purpose.

Connecting All Data Sources to Identify the Needs of the Student

[illegible]e Law requires that certain special factors be considered for each student when developing an IEP. These are listed in a check-off format. These questions can help begin the conversation about the unique needs of the child and each must be discussed.

If any of these special factors are checked, there should be evidence in other sections of the IEP, such as the section regarding Accommodations, Services and Supports or through Goals and Objectives or Benchmarks that those needs are being addressed.

Information about the student's strengths, interests, how he or she learns best can be documented in this section. Concerns and needs will be elicited from parents, teachers and perhaps the student himself. Information and data will be gathered from a number of sources including formal and informal assessments, medical history, parents and teacher observations. All relevant information will be considered in identifying the unique needs of the student and the accommodations, supports and services needed to address those needs.

The Parent IEP Input Form or another planning tool may have be sent home prior to the meeting or can be used as a tool for discussion with parents in helping them contribute to the IEP. Continuity from year to year is important and parents and teachers should share a common goal and vision for student expectations.

The Data Sources Form is another planning tool teams could use to ensure they have all relevant data. Both classroom based evaluations and formal assessments will yield information to identify the unique needs of the child

[illegible]pecify those accommodations, including assistive technology, services and supports, which are being added to the program so that the child can progress in the general education curriculum or extracurricular areas. Some examples of accommodations, services or supports are: small class, one to one instruction, peer tutoring, tape recorder, computer-based instructional supports, a particular instructional technique, extra time or modifications in the curriculum (e.g. curricula areas need to be modified to address functional, every day routines).

Process Tip: One member of the team needs to facilitate the meeting and guide the discussion. **Air all viewpoints** by having participants voice their concerns and needs. **Clarify** and summarize each person's key points.. **Brainstorm** possible alternatives and/or solutions to meet the needs of the child. When the team feels stuck, ask the question "Why do you want what you want?" Try to understand the underlying interest or concern and summarize what is heard.

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Review of Assessment Data

When determining what additional data are needed the IEP team needs to address some fundamental questions:
- *What do we already know about the child (present levels of performance)?*
- *What additional data is needed for programming?*

If the information to be gathered includes data gathered in a typical way in classrooms, parental informed consent (signature) is not needed. If the information to be gathered includes more formalized assessments that are not typically given to all children (such as a psychological assessment), parental permission is needed. Teams need to reference the standards or the performance indicators (general education curriculum) to help decide the sort of data that might need to be gathered. For students in a functional curriculum, standards for functional curriculum may be referenced.

Participation in statewide assessment

Accommodations on the statewide assessment must be used instructionally or in test taking situations in the classroom. Documentation of the accommodations to be used on the DSTP should be checked off on the Accommodations checklist. The checklist is extensive but there may be accommodations used instructionally which are not on the checklist. Document those accommodations under the section detailing accommodations, modifications, services and supports.

Transportation

When modifications or adaptations are needed to the regular transportation, a representative from the transportation office should be invited to participate in the development of the IEP. If significant transportation modifications are anticipated, a representative from the transportation office is a critical member of the team.

Discipline

The Discipline section is focused on the expected code of conduct for all students. If a student needs to be exempted from certain portions of a code of conduct or if modifications are necessary, those changes should be noted in this section.

Transition Services Planning beginning at age 14

[illegible] *Post High School Goals:*

This statement describes what the student wants to do after high school; where the student want to live, work, recreate, learn and participate in his or her community a few years after leaving the secondary school setting. It is reviewed annually so that the outcomes or vision becomes clearer and more concrete as the student has more experiences.

Courses of Study Leading to My Post-High School Goals Are:

List the courses or sequence of educational activities that will lead toward graduation and help the student toward the identified post-school goals. An attached Graduation Plan would meet this requirement.

High School Program:

The IEP team discusses options for secondary programs and makes decisions about the program for school completion, either with a diploma or a certificate of performance.

Other Transition Services I will need to Accomplish My Post-High School Goals:

The statement of needed transition services must address community experiences, employment and other post-school objectives, and daily living and functional vocational evaluations, if appropriate. Strategies and activities [illegible] instruction and related services are also required, and documented in other places in the IEP. The IEP team [illegible]ll determine activities and strat3gies necessary during the next 204 years to achieve or work toward the desired post-school outcomes. When identifying any agencies that may support transition through providing or paying for transition services, the IEP team must records those linkages and responsibilities in this section.

In Addition to Support from My School, I will need the Assistance of:

Specify the agency (s) and persons who may provide services.

Documentation of Other Agency Participation if They Did Not Attend:

If an invited agency chooses not to attend the IEP meeting, use other means to ensure they participate in the planning of transition services. Document these efforts and include them in the IEP.

Documentation of Student Preferences and Interests:

If the student chooses not to attend the meeting, use other means to gather information about his or her needs, interest, and preferences. This information will be used in the development of the IEP.

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Development of Goals and Objectives or Benchmarks

Annual Goals that simply paraphrase curricular content areas such as "Student will improve reading skills, Student will increase personal hygiene skills, or Student will demonstrate acceptable social skills" are difficult to measure. These goals do not specify which or how many reading, personal hygiene or social skills is the focus of the annual goal.

The annual goal needs to identify "what" the student will achieve. Goals can be made measurable by specifying the knowledge, skill, or behavior the student is expected to achieve within one year (e.g. 2nd grade reading word recognition skills, personal hygiene skills associated with body and clothing cleanliness; social skills required for interactions during both academic and non-academic classroom activities). If the present level of performance statement has identified specific knowledge, skills or behaviors already mastered by a student, a way of defining the goal would be to specify a reasonable number of additional skills.

Goals are directly related to identified needs and progress is measured in the general education curriculum. In Delaware, the content standards are considered the general education curriculum.

IDEA states that progress on goals and objectives or benchmarks must be reported to parents at least as often as progress is reported to students in the regular curriculum. The goals and objectives/benchmarks page may be used for this purpose.

The Therapist signature is intended only for those goals and objectives pages that are being used as the measurement and evaluation tool for Medicaid cost recovery. A therapist signature is not required on every goals and objectives page but only on those pages related to therapy.

For students who are planning transition, it may be helpful to work through the transition section before the goals and objectives are developed or to look at both sections simultaneously. Although the form is in a particular sequence, discussions and problem solving around particular needs are not always so sequential.

Process Tip: Summarize for parents what is being measured, how objectives will be measured, how often and who will be monitoring the objectives.

nsideration of ESY

ESY services must be provided based on the IEP team's decision. The IEP team may decide after considering a number of factors that in order for an individual student to receive a free, appropriate pubic education, extended school year services must be provided. Write the rationale for the decision in the IEP. ESY is not limited to particular categories or disabilities. The type or amount of duration of those services may not be unilaterally limited. Services must be decided on an individual basis.

Special Education Hours and Related Services

The chart that records the special education hours and related services has not changed. A primary function of this chart is to document the special education time spent with the special education teacher for unit count purposes. Related service hours are not counted as part of the special education time.

Process Tip: Summarize any key points and decisions that have been made and check for group understanding. Clarify for parents that signing will indicate agreement or disagreement with the program just developed. Summarize for parents and check for understanding regarding procedural safeguards.

Least Restrictive Environment /Placement

The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options. When making the placement decision, the IEP team must ensure that children with disabilities are educated with children who are nondisabled to the maximum extent appropriate.

Students are placed in special classes or separate schools only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

*Therefore, the IEP must include an explanation and description of those activities, if any, in which the student will **NOT** participate with nondisabled children within the regular education class.*

Determination of placement is a separate decision from the writing of an IEP (needs, accommodations, supports and services, goals and objectives or benchmarks). It is however, directly related to the student's needs documented in the IEP. It is possible that agreement on a student's program can be reached with differences occurring on placement/location for receipt of special education and related services. Placement decisions are determined at least annually and are based on the child's IEP and are as close as possible to the child's home.

"In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs; and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum." [(300-552)(d)(e)]

As always, placement decisions are not to be determined based on category of disability, configuration of service delivery systems, availability of educational or related services, availability of space or curriculum content, or methods of curriculum delivery.

LRE is viewed as a function of time away from the regular classroom. Students who are in a team-taught or TAM class, or who are out of the regular class for a small percentage of the school day (less than 21%) are considered to be in the regular class placement.

Students who are out of the regular class for 21% to 60% of the day are considered to have services provided in both separate education classes and in the regular setting.

Students who are outside of the regular class more than 60% of the day are considered to be in a separate special education setting within an integrated setting.

Students who are in a public separate day school facility for more thatn50% of the day are considered to be in a separate setting.

Process Tip: Clarify for parents the difference between services and placement and check for understanding so that all understand where services will be delivered.

IEP Revision Page

The IEP Revision page has not changed from previous versions of the IEP form. It is to be used when the changes to the accommodations, services and supports are minor. For example, speech services are being changed from two times a week to three times a week; time in the resource room has been reduced from 12 hours a week to 10 hours a week; or an additional goal and objective or benchmark is being added. The IEP has not changed in a substantive way therefore it is not necessary to develop an entirely new document. Adding a revision page to the current IEP does necessitate an IEP meeting however. It is to be treated as a regular IEP meeting so that adequate notice of the IEP meeting and attendance of essential IEP members is necessary.

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EVALUATION SUMMARY REPORT:
DATA REVIEW AND DOCUMENTATION OF ELIGIBILITY

☐ Initial ☐ Re-evaluation ☐ Dismissal Date / / /

Student ______________________ Date of Birth / /

______________________ Grade ______ Age ______

PURPOSE

To review recent evaluations/assessments to determine:

- whether the child has a particular category of disability or continues to have such a disability
- present levels of performance and educational needs
- in the case of re-evaluation whether additions or modifications to the special education and related services need to be made so that the child may meet measurable annual goals in the IEP and participate in the general education curriculum

For Initial Evaluation, the data from the Instructional Support Team Process must be reviewed. This form will document data reviewed as described in summary statements.

Review of Existing Data:

- Information/evaluations from parents
- Current classroom based assessments and observations
- Observations by teacher and related services providers

Other data e.g., .medical, socio-cultural, adaptive behavior checklist, physician statement, functional behavior assessment, intelligence test scores, behavior checklist, achievement test scores (if appropriate)

Specific Learning Disability (must be completed if classified LD)

- Student has been provided with learning experiences appropriate for his and ability? ☐ Yes ☐ No
- Achievement is commensurate with age and ability level? ☐ Yes ☐ No
- Relevant behaviors noted during the observations of the student ☐ Yes ☐ No
- Educationally relevant medical findings, if any: ____

____

- The IEP Team has determined that ______________________ has a specific learning disability. The basis for making this determination is a severe discrepancy between ability and achievement in the following areas:

_____ Oral Expression	_____ Basic Reading Skills	_____ Mathematics Calculation
_____ Listening Comprehension	_____ Reading Comprehension	_____ Mathematics Reasoning
_____ Written Expression		

The IEP team agrees by signing below that the severe discrepancy between ability and achievement is NOT primarily the result of a visual or motor impairment, mental retardation, emotional disturbance or environmental, cultural or economic disadvantage and is not correctable without special education and related services.

ELIGIBILITY DETERMINATION MAY NOT BE MADE DUE TO LACK OF INSTRUCTION IN READING, MATH OR DUE TO LIMITED ENGLISH PROFICIENCY

Based upon the review of the data, it is the consensus of the IEP team that ____________________ ☐ does ☐ does not meet the eligibility criteria to receive special education services classified as ____________________.

Signature	Title	Signature	Title
	Parent(s)		Qualified Evaluation Specialist (as appropriate)
	Regular Teacher		
	Special Educator		
	Administrator/Designee		

This report does not reflect my conclusions and a separate statement reflecting my conclusions is attached

____

____

Signature(s)

APPENDIX B

A Summary Listing of Interagency Agreements

INTERAGENCY AGREEMENTS

1. Interagency Agreement for the Delaware Early Intervention System Under Part H of The Individuals with Disabilities Education Act (IDEA) (July 9, 1996).

   The purpose of this agreement is to ensure collaboration in the continuation of a statewide comprehensive coordinated, multidisciplinary, and interagency service delivery system for infants and toddlers with disabilities and/or developmental delays who are eligible under Part H of IDEA. The Agreement is between the Department of Health and Social Services (DHSS), including the Divisions of Public Health, Management Services, Mental Retardation, Visual Impairment, and the Social Services Medicaid Program, Department of Services to Children, Youth and their Families (DSCYF), including the Division of Family Services and Child Mental Health, and the Department of Public Instruction (Education).

2. Memorandum of Understanding Among New Castle County School Districts Concerning Preschool Special Education Services (June 1996).

   The purpose of this Memorandum is to delineate responsibilities for screening, evaluation and provision of a free appropriate public education (FAPE) for preschool children in New Castle County. Agencies involved include the following school districts: Appoquinimink, Brandywine, Christina, Colonial, and Red Clay Consolidated School Districts.

3. Transition Agreement Between the Division of Mental Retardation (DMR) Department of Health & Social Services (DHSS) and the Division for Exceptional Children (DPI), (March 1992).

   The Agreement between the Division of Mental Retardation (DMR), Department of Health and Social Services (DHSS) and Department of Public Instruction (DPI) is for the purpose of improving the quality and coordination of services for youths with mental retardation as they transition from school to the adult community in Delaware.

4. Cooperative Agreement Between the Exceptional Children and Early Childhood Group, Vocational-Technical Education and School-to-Work Group, Student, Family and School Support Group/Department of Public Instruction, and Delaware School Districts and the Division of Vocational Rehabilitation/Department of Labor (May 6, 1997).

   The purpose of the Cooperative Agreement is to improve the quality and coordination of services for students (ages 14-21) with disabilities as they make the transition from school to the community in Delaware. Agencies included the Department of Public Instruction, all 19 school districts, and the Division of Vocational Rehabilitation of the Department of Labor.

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5. Interagency Agreement Between the Division for the Visually Impaired (Department of Health and Social Services), Exceptional Children and Vocational-Technical Education Divisions (Department of Public Instruction) and Local Educational Agencies (LEAs) Serving Visually Impaired Children (February 1993).

   The purpose of this agreement is to ensure a free appropriate public education (FAPE) is provided to all visually impaired children. Agencies included the Division for the Visually Impaired, the Department of Public Instruction (Education) and the superintendents of the nineteen (10) school districts.

APPENDIX C

Other Applicable Regulations of the State Board of Education of the Department of Education

806 Physical Examinations

1.0 All pupils upon entrance to the Delaware school system shall have had a physical examination by a licensed medical physician, nurse practitioner or physician's assistant. The Physical Examination form can be given to the parent or guardian if requested.

- 1.1 New enterers have 14 school days to comply with the regulation before being excluded from school. A documented appointment with a licensed provider as stated above will defer exclusion.
- 1.2 All students shall have a physical examination each year before participating in interscholastic sports (see Rule 8A of the Delaware Secondary School Athletic Association [DSSAA] Annual Official Handbook).
- 1.3 Those selected pupils whose health status suggests further follow-up as a result of observations and/or conferences by the teacher and school nurse shall have an additional physical examination or medical consultation.
- 1.4 Children of Christian Scientist parents may request exemption from physical exams by having their parents obtain the proper form from the "Committee on Publication for Delaware" which is responsible for such matters. The school should not furnish these forms.
- 1.5 The school nurse shall record all findings on the School Health Record.

Comments on this amended Regulation:

This regulation on Physical Examinations was found on pages 15 and 16 in The School Nurse, A Guide to Responsibilities. This regulation requires that all students have a physical examination before entering school, lists one exception and requires school nurses to record all findings on the school record. The amendment was necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements. The amended regulation is also found in the Technical Assistance Manual for School Nurses.

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809 Orthopedic Screening

1.0 All pupils in grades 5 through 9 shall have an orthopedic screening by December 15th of each year.
  1.1 The school nurse shall notify the parents/guardian if a suspected deviation has been detected.
  1.2 The school nurse shall record the findings on the school health record.

Comments on this amended Regulation:

This regulation on Orthopedic Screening was found on pages 51 and 52 in The School Nurse, A Guide to Responsibilities. This regulation lists the grades when students must receive orthopedic screenings and requires the school nurse to record the information in the school health record. The amendment was necessary in order to isolate the regulatory responsibilities from the technical assistance information and to use the word "shall" in the regulatory statements. This amended regulation is also found in the Technical Assistance Manual for School Nurses.

807 Vision Screening

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8, and 10 shall receive a vision screening by December 15th of the current school year.
  1.1 Students new to the school system, teacher referrals, those students considered for special education placement and driver education students shall have a vision screening.
  1.2 The school nurse shall record the results on the School Record.
  1.3 The school nurse shall notify parents/guardians if the child has a suspected vision problem.

Comments on this amended Regulation:

This regulation on Vision Screening was found on pages 43 to 48 in The School Nurse, A Guide to Responsibilities. This regulation lists the grades where vision screening must occur as well as requiring screenings for new students, special education students and driver education students. Requirements to notify parents or guardians and to enter the results in the school health record are also included. The amendment was necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements. This amended regulation is also found in the Technical Assistance Manual for School Nurses.

808 Hearing Screening

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8 and in grade 10 or 11 shall receive a hearing screening by December 15th of the current school year.
  1.1 Students new to the school system and those students considered for special education placement shall have a hearing screening.
  1.2 Should any child again fail the screening, a repeat screening shall be done within two (2) weeks of the initial screening.
  1.3 The school nurse shall record the test results on the School Health Record.
  1.4 The school nurse shall notify the parents/guardian that the child has failed the hearing screening and may have a hearing loss.

Comments on this amended Regulation:

This regulation on Hearing Screening Procedures was found on pages 28 to 35 in The School Nurse, A Guide to Responsibilities. This regulation lists the grade levels where hearing screenings must occur, requires re-screenings and new student screenings. Notification of the parent or guardian of the screening results and recording the results in the school health record are also regulated. The amendment was necessary in order to isolate the regulatory responsibilities of the school nurse from the technical assistance information and to use the word "shall" in the regulatory statements. This amended regulation is also found in the Technical Assistance Manual for School Nurses.

APPENDIX D

Identification Procedures for Determination of a Learning Disability

(Tables 1 and 2)

Identification Procedures for Determination of a Learning Disability

When identifying students with learning disabilities, inquiry shall be made by the MDT into each of the following major areas:

1. Inability to succeed in a regular education placement as documented by significantly below grade level performance in those subjects for which regular education standards exist which define promotion from grade to grade.

2. Intellectual functioning level as determined by an evaluation specialist specifically trained in the assessment and interpretation of intelligence tests, such as a school psychologist. The measurement of intellectual functioning shall include an individually administered test of intelligence which is highly reliable and valid for the student being tested. Group measures, unjustified prorated scores, and abbreviated forms of intelligence tests shall not be used.

3. Academic achievement level as assessed by a norm-referenced test Criterion-referenced tests, curriculum-based assessments, informal measures, student work samples, and the student's educational history may be used to corroborate norm-referenced test scores.

4. A severe discrepancy between current achievement level and expected achievement level as documented by the MDT. The establishment of a severe discrepancy shall take into account the correlation between intellectual and achievement levels, as well as regression to the mean. Table 1 below shall be applied for this purpose, utilizing the following steps:

   Step 1: Determine the correlation between the intellectual and achievement measures. Correlations between intelligence tests and achievement tests are generally available in the research literature. Table 2 below lists some of the possible correlations which may be applied to calculate ability-achievement discrepancies. MDTs are under no obligation to use these correlations, and may prefer to use other values based on more recent research, provided that such values are obtained using samples that are reasonably representative by age and score distribution.

   For example, Table 2 shows that the approximate correlation between the Wechsler Intelligence Scale for Children-Revised Full Scale IQ and the Written Language and Knowledge Cluster in the Woodcock-Johnson Tests of Achievement as .68. If the correlation between intellectual and achievement measures is not known, a coefficient of .55 should be used.

   Step 2: Locate the student's intellectual standard score in the first column of Table 1 (labeled "IQ"), titled Observed Achievement Levels Necessary for IQ-Achievement Discrepancy Using Standard Scores on Tests With Ms = 100 and SDs = 15.

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Step 3: Follow that row determined in Step 2 to the column with the correlational value closest to the correlation between the chosen measures of intellectual functioning and achievement. For example, the correlation between the WISC-R and the Written Language and Knowledge Cluster of the Woodcock-Johnson is approximately .68. If a student's score on the WISC-R is 105, the achievement test standard score necessary for a severe discrepancy is .85.

Step 4: Compare the actual achievement standard score with the expected score. For example, if the criterion achievement score in Step 3 was .85, and the student had an actual Woodcock-Johnson standard score of .85 or lower, the difference is indicative of a severe discrepancy.

The following tables have been prepared, under contract, by Dr. Joseph Glutting and Dr. George Bear, Assistant Professors, Department of Educational Studies, University of Delaware.

TABLE 1

Observed Achievement Levels Necessary for IQ-Achievement Discrepancy Using Standard Scores on Tests with Ms = 100 and SDs = 15

Correlations Between Intellectual and Achievement Measures

	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
I.Q.	Achievement Test Standard Score Necessary for Discrepancy										
150	94	97	100	103	106	110	113	117	121	125	129
149	94	96	100	103	106	109	113	116	120	124	128
148	93	96	99	102	105	109	112	115	119	123	127
147	93	96	99	102	105	108	111	115	118	122	126
146	92	95	98	101	104	107	111	114	118	121	126
145	92	95	98	101	104	107	110	113	117	121	125
144	92	94	97	100	103	106	109	113	116	120	124
143	91	94	97	100	103	106	109	112	115	119	123
142	91	94	96	99	102	105	108	111	115	118	122
141	91	93	96	99	101	104	107	111	114	117	121
140	90	93	95	98	101	104	107	110	113	117	121
139	90	92	95	98	100	103	106	109	112	116	120
138	90	92	95	97	100	103	105	108	112	115	119
137	89	92	94	97	99	102	105	108	111	114	118
136	89	91	94	96	99	101	104	107	110	113	117
135	89	91	93	96	98	101	103	106	109	113	116
134	88	90	93	95	98	100	103	106	109	112	115

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TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
I.Q.	Achievement Test Standard Score Necessary for Discrepancy										
133	88	90	92	95	97	100	102	105	108	111	115
132	88	90	92	94	96	99	102	104	107	110	114
131	87	89	91	94	96	98	101	104	106	109	113
130	87	89	91	93	95	98	100	103	106	109	112
129	87	88	91	93	95	97	100	102	105	108	111
128	86	88	90	92	94	97	99	101	104	107	110
127	86	88	90	92	94	96	98	101	103	106	109
126	85	87	89	91	93	95	98	100	103	105	109
125	85	87	89	91	93	95	97	99	102	105	108
124	85	86	88	90	92	94	96	99	101	104	107
123	84	86	88	90	92	94	96	98	100	103	106
122	84	86	87	89	91	93	95	97	100	102	105
121	84	85	87	89	90	92	94	97	99	101	104
120	83	85	86	88	90	92	94	96	98	101	104
119	83	84	86	88	89	91	93	95	97	100	103
118	83	84	86	87	89	91	92	94	97	99	102
117	82	84	85	87	88	90	92	94	96	98	101
116	82	83	85	86	88	89	91	93	95	97	100
115	82	83	84	85	87	89	90	92	94	97	99

TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

I.Q.	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
	Achievement Test Standard Score Necessary for Discrepancy										
114	81	82	84	85	87	88	90	92	94	96	98
113	81	82	83	85	86	88	89	91	93	95	98
112	81	82	83	84	85	87	89	90	92	94	97
111	80	81	82	84	85	86	88	90	91	93	96
110	80	81	82	83	84	86	87	89	91	93	95
109	80	80	82	83	84	85	87	88	90	92	94
108	79	80	81	82	83	85	86	87	89	91	93
107	79	80	81	82	83	84	85	87	88	90	92
106	78	79	80	81	82	83	85	86	88	89	92
105	78	79	80	81	82	83	84	85	87	89	91
104	78	78	79	80	81	82	83	85	86	88	90
103	77	78	79	80	81	82	83	84	85	87	89
102	77	78	78	79	80	81	82	83	85	86	88
101	77	77	78	79	79	80	81	83	84	85	87
100	76	77	77	78	79	80	81	82	83	85	87
99	76	76	77	78	78	79	80	81	82	84	86
98	76	76	77	77	78	79	79	80	82	83	85
97	75	76	76	77	77	78	79	80	81	82	84
96	75	75	76	76	77	77	78	79	80	81	83

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TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

	.35	.40	.45	.50	.55	.60	.65	.70	.75.80	.85	
I.Q.	Achievement Test Standard Score Necessary for Discrepancy										
95	75	75	75	76	76	77	77	78	79	81	82
94	74	74	75	75	76	76	77	78	79	80	81
93	74	74	74	75	75	76	76	77	78	79	81
92	74	74	74	74	74	75	76	76	77	78	80
91	73	73	73	74	74	74	75	76	76	77	79
90	73	73	73	73	73	74	74	75	76	77	78
89	73	72	73	73	73	73	74	74	75	76	77
88	72	72	72	72	72	73	73	73	74	75	76
87	72	72	72	72	72	72	72	73	73	74	75
86	71	71	71	71	71	71	72	72	73	73	75
85	71	71	71	71	71	71	71	71	72	73	74
84	71	70	70	70	70	70	70	71	71	72	73
83	70	70	70	70	70	70	70	70	70	71	72
82	70	70	69	69	69	69	69	69	70	70	71
81	70	69	69	69	68	68	68	69	69	69	70
80	69	69	68	68	68	68	68	68	68	69	70
79	69	68	68	68	67	67	67	67	67	68	69
78	69	68	68	67	67	66	66	66	67	67	68

TABLE 1, Continued

Correlations Between Intellectual and Achievement Measures

	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85
I.Q.	Achievement Test Standard Score Necessary for Discrepancy										
77	68	68	67	67	66	66	66	66	66	66	67
76	68	67	67	66	66	65	65	65	65	65	66
75	68	67	66	66	65	65	64	64	64	65	65
74	67	66	66	65	65	64	64	64	64	64	64
73	67	66	65	65	64	64	63	63	63	63	64
72	67	66	65	64	63	63	63	62	62	62	63
71	66	65	64	64	63	62	62	62	61	61	62
70	66	65	64	63	62	62	61	61	61	61	61

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TABLE 2

Correlation Tables for Measures of Intelligence/Cognitive Ability and Academic Achievement

Correlations between common measures of intelligence/cognitive ability and academic achievement are presented in the following tables. Correlations were obtained from test manuals, journal articles, and research reports provided by test publishers. Whenever correlations were available from more than one source, correlations derived from the larger sample were used. Sample sizes and the source of the correlations are listed below each table.

Note that samples vary greatly across measures. Unless otherwise noted, correlations were derived from samples of students without disabilities, or "normal" students. Also note that correlations are based on the total score of the measure of intelligence (e.g., Full Scale IQ, Composite Index, etc.).

Correlations are not available for all popular measures of intelligence and academic achievement. When unavailable, it is recommended that the correlation coefficient of .55 be used. However, where appropriate, correlations from other sources may be used. For example, districts may choose to develop their own correlation tables for measures that they commonly employ. Likewise, correlations reported in new manuals or recent journal articles should be used, where appropriate.

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Wechsler Intelligence Scale for Children - Third Edition (WISC-III)

Kaufman Test of Educational Achievement (K-TEA), Comprehensive Form

	Ages 6 to 7[a]	Ages 8 to 10[b]	Ages 11 to 13[c]	Ages 14 to 16[c]
Reading Decoding	.57	.73	.70	.75
Reading Comprehension	.60	.80	.84	.80
Reading Composite	.60	.79	.82	.83
Math Applications	.71	.77	.83	.79
Math Computation	.58	.70	.74	.73
Math Composite	.72	.77	.84	.78
Spelling	.56	.73	.64	.66

[a] n = 32; [b] n = 44; [c] n = 29; American Guidance Services.

Key Math-Revised Diagnostic Arithmetic Test*

	Ages 6 to 8[a]	Ages 9 to 11[b]	Ages 12 to 16[c]
Basic Composite	.69	.48	.74
Operations Area	.41	.44	.65
Applications Area	.51	.60	.65
Total Math	.59	.59	.75

[a] n = 61; [b] n = 47; [c] n = 59; American Guidance Services.

*Based on correlations with the WISC-R.

Peabody Individual Achievement Test-Revised (PIAT-R)*

	Ages 6 to 8[a]	Ages 9 to 11[b]	Ages 12 to 16[c]
Reading Recognition	.58	.56	.39
Reading Comprehension	.53	.56	.44
Total Reading	.59	.58	.44
Mathematics	.38	.35	.38
Spelling	.37	.37	.12
Written Composite	.50	.50	.45

[a] n = 41; [b] n = 55; [c] n = 69; American Guidance Services.

*Based on correlations with the WISC-R.

Wechsler Individual Achievement Test (WIAT)

AGE IN YEARS	6	7	8	9	10	11	12	13	14	15	16
Basic Reading	.47	.60	.58	.44	.61	.66	.66	.64	.55	.64	.65
Reading Comprehension	.50	.66	.70	.70	.68	.67	.71	.68	.67	.67	.64
Reading Composite	.48	.67	.67	.62	.71	.71	.74	.73	.64	.71	.75
Mathematics Reasoning	.63	.64	.72	.77	.75	.67	.76	.74	.71	.68	.84
Numerical Operations	.54	.62	.60	.60	.57	.59	.49	.58	.56	.59	.60
Mathematics Composite	.65	.68	.72	.74	.72	.69	.74	.73	.65	.68	.79
Listening Comprehension	.62	.73	.70	.57	.56	.54	.59	.64	.56	.37	.56
Oral Expression	.56	.53	.40	.33	.38	.39	.35	.47	.42	.52	.37
Language Composite	.67	.68	.61	.49	.55	.57	.53	.64	.53	.55	.52
Spelling	.48	.58	.52	.48	.51	.53	.43	.56	.46	.55	.55
Written Expression	N/A	N/A	N/A	.45	.38	.50	.55	.41	.53	.52	.39
Writing Composite	N/A	N/A	N/A	.51	.52	.58	.53	.57	.53	.60	.55

n = 100 in each age group; total n = 1100; WIAT test manual.

Wide Range Achievement Test - Third Edition (WRAT3)

	Blue Form	Tan Form	Combined Form
Reading	.68	.69	.66
Spelling	.64	.68	.66
Arithmetic	.71	.73	.74

n=100; WRAT3 test manual.

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Regular Education[a]	Mentally Retarded[b]	Learning Disabled[b]
Broad Reading	.54	.56	.49
Basic Reading Skills	.43	.51	.39
Reading Comprehension	.69	.72	.55
Broad Mathematics	.73	.65	.58
Basic Mathematics Skills	.69	.73	.55
Mathematics Reasoning	.72	.51	.66
Broad Written Language	.44	N/A	N/A
Basic Writing Skills	.41	.63	.44

[a] n = 46; [b] n = 80; CAS test manual and Riverside Publishing Company.

Woodcock Reading Mastery Test – Revised (WRMT-R), Form G*

	Ages 6 to 7[a]	Ages 8 to 10[b]	Ages 11 to 13[c]	Ages 14 to 16[d]
Readiness Cluster	.61	.40	.30	.55
Basic Skills Cluster	.65	.64	.60	.62
Reading Comprehension Cluster	.67	.76	.80	.86
Total Reading Cluster	.64	.70	.72	.81

[a] n = 62; [b] n = 59; [c] n = 41; [d] n = 51; American Guidance Services.

*Based on correlations with the WISC-R.

Wechsler Abbreviated Scale of Intelligence (WASI)

Wechsler Individual Achievement Test (WIAT)

	Ages 6 to 16	
	FSIQ-4[a]	FSIQ-2[b]
Basic Reading	.63	.61
Reading Comprehension	.71	.67
Reading Composite	.72	.69
Mathematics Reasoning	.64	.64
Numerical Operations	.56	.60
Mathematics Composite	.64	.66
Listening Comprehension	.57	.52
Oral Expression	.47	.47
Language Composite	.64	.63
Spelling	.59	.57
Written Expression	.64	.64
Writing Composite	.72	.72

[a] based on 4 subtests; [b] based on 2 subtests; n = 210; WASI test manual.

Wechsler Adult Intelligence Scale - Third Edition (WAIS-III)

Kaufman Test of Educational Achievement (K-TEA)*

	Grades 10 to 11
Reading Composite	.43
Math Composite	.46
Spelling	.45

n = 51; WJ-R Cog technical manual.

*Based on correlations with the WAIS-R.

Peabody Individual Achievement Test (PIAT)*

	Grades 10 to 11
Reading Composite	.74
Mathematics	.61
Spelling	.52

n = 51; WJ-R Cog technical manual.

*Based on correlations with the WAIS-R; correlations between the most recent revisions of the WAIS and the PIAT were not reported.

Wechsler Individual Achievement Test (WIAT)

	Ages 17 to 19
Basic Reading	.69
Reading Comprehension	.71
Reading Composite	.76
Mathematics Reasoning	.82
Numerical Operations	.72
Mathematics Composite	.81
Listening Comprehension	.71
Oral Expression	,45
Language Composite	.68
Spelling	.66
Written Expression	.52
Writing Composite	.68

n = 142; WAIS-III test manual.

Wide Range Achievement Test - Third Edition (WRAT3)*

	Combined Form
Reading	.53
Spelling	.49
Arithmetic	.60

n=40; WRAT3 test manual.

*Based on correlations with the WAIS-R.

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)*

	Grades 10 to 11
Broad Reading	.43
Basic Reading Skills	.25
Reading Comprehension	.57
Broad Mathematics	.67
Basic Mathematics Skills	.65
Mathematics Reasoning	.72
Broad Written Language	.41
Basic Writing Skills	.36
Written Expression	.26

n = 51; WJ-R Cog technical manual.

*Based on correlations with the WAIS-R.

Wechsler Preschool and Primary Scales of Intelligence – Revised (WPPSI-R)

Wechsler Individual Achievement Test (WIAT)

	Age 5
Basic Reading	.39
Reading Comprehension	N/A
Reading Composite	N/A
Mathematics Reasoning	.65
Numerical Operations	.58
Mathematics Composite	.70
Listening Comprehension	.61
Oral Expression	.50
Language Composite	.67
Spelling	.62
Written Expression	N/A
Writing Composite	N/A

n = 84; WIAT test manual.

Wide Range Achievement Test (WRAT)*

	Ages 5 to 6
Reading	.47
Spelling	.51
Arithmetic	.51

n = 60; WPPSI test manual and Reynolds, Wright, & Dappen (1981).

*Based on correlations with the WPPSI; correlations between the most recent revisions of the WPPSI and the WRAT were not reported.

Cognitive Assessment System (CAS)

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Ages 5-7[a]	Ages 8-10[b]	Ages 11-13[c]	Ages 14-17[d]
Broad Reading	.56	.72	.76	.70
Basic Reading Skills	.56	.68	.71	.69
Reading Comprehension	.54	.72	.72	.72
Broad Mathematics	.62	.71	.73	.73
Basic Mathematics Skills	.62	.66	.72	.74
Mathematics Reasoning	.62	.67	.72	.68
Basic Writing Skills	.54	.66	.73	.73

[a]n = 630; [b]n = 454; [c]n = 228; [d]n = 288; CAS test manual.

Comprehensive Test of Nonverbal Intelligence (C-TONI)

Test of Written Language-Third Edition (TOWL-3)

	High School Students	
	Form A	Form B
Overall Writing	.56	.50

n = 52; TOWL-3 test manual.

Differential Ability Scales (DAS)

Kaufman Test of Educational Achievement (K-TEA), Comprehensive Form

	Ages 7 to 11
Reading Decoding	.49
Reading Comprehension	.59
Reading Composite	.57
Spelling	.53
Mathematics Applications	.65
Mathematics Computation	.55
Mathematics Composite	.69

n = 29; DAS test manual.

Kaufman Adolescent and Adult Intelligence Test (KAIT)

Kaufman Test of Educational Achievement (K-TEA), Comprehensive Form

	Ages 13 to 18
Reading Decoding	.74
Reading Comprehension	.72
Reading Composite	.76
Spelling	.64
Mathematics Applications	.72
Mathematics Computation	.47
Mathematics Composite	.66

n = 97; American Guidance Services.

Kaufman Assessment Battery for Children (K-ABC)

Kaufman Test of Educational Achievement (K-TEA), Comprehensive Form

	Ages 6 to 8[a]	Ages 9 to 12[b]
Reading Decoding	.49	.46
Reading Comprehension	.51	.64
Reading Composite	.50	.64
Spelling	.47	.30
Mathematics Applications	.60	.71
Mathematics Computation	.53	.47
Mathematics Composite	.63	.67

[a]n = 55; [b]n = 51; K-TEA test manual.

Key Math-Revised Diagnostic Arithmetic Test

	Ages 5 to 8[a]	Ages 9 to 12[b]
Basic Composite	.71	.58
Operations Area	.59	.32
Applications Area	.75	.57
Total	.76	.55

[a]n = 46; [b]n = 43; American Guidance Services.

Peabody Individual Achievement Test (PIAT)*

	Grades 3 to 4
Reading Composite	.52
Mathematics	.51
Spelling	.14

n = 72; WJ-R Cog technical manual.

*Correlations with the PIAT-R were not reported.

Stanford Diagnostic Reading Test

	Ages 5 to 12
Phonetic Analysis	.60
Literal Comprehension	.37
Inferential Comprehension	.60
Total Comprehension	.55

n = 63; K-ABC test manual.

Wide Range Achievement Test - Revised (WRAT-R)*

	Grades 3 to 4
Reading	.38
Arithmetic	.29
Spelling	.24

n = 72; WJ-R Cog technical manual.

*Correlations with the WRAT3 were not reported.

Woodcock-Johnson Revised, Tests of Achievement (WJ-R, Ach)

	Grades 3 to 4
Broad Reading	.45
Basic Reading Skills	.39
Reading Comprehension	.46
Broad Mathematics	.47
Basic Mathematics Skills	.45
Mathematics Reasoning	.42
Broad Written Language	.38
Basic Writing Skills	.38
Written Expression	.29

n = 72; WJ-R Cog technical manual.

Woodcock Reading Mastery Test – Revised (WRMT-R), Form G

	Ages 6 to 7[a]	Ages 8 to 9[b]	Ages 10 to 12[c]
Readiness Cluster	.58	.38	.30
Basic Skills Cluster	.53	.57	.43
Reading Comprehension Cluster	.62	.66	.62
Total Reading Cluster	.58	.62	.57

[a]n = 40; [b]n = 39; [c]n = 41; American Guidance Services.

Kaufman Brief Intelligence Test (K-BIT)

Kaufman Test of Educational Achievement (K-TEA), Brief Form

	Ages 6 to 9[a]	Ages 12 to 17[b]
Math	.46	.80
Reading	.53	.78
Spelling	.44	.60

[a]n = 50; [b]n = 38; K-BIT test manual.

Kaufman Test of Educational Achievement (K-TEA), Comprehensive Form

	Normal		Learning Disabled	
	Ages 6 to 12[a]	Ages 12 to 17[b]	Ages 6 to 14[a]	Ages 11 to 17[c]
Reading Decoding	.47	.57	.81	.42
Reading Comprehension	.51	.72	.77	.55
Reading Composite	.53	.71	.80	.53
Spelling	.33	.44	.75	.32
Mathematics Applications	.72	.72	.81	.62
Mathematics Computation	.52	.74	.77	.60
Mathematics Composite	.66	.77	.83	.65

[a]n = 49; [b]n = 39; [c]n = 48; K-BIT test manual.

Wide Range Achievement Test-Revised (WRAT-R)*

	Learning Disabled
	Ages 12 to 19
Reading	.37
Spelling	.35
Arithmetic	.35

n = 49; K-BIT test manual.

*Correlations with the WRAT3 were not reported.

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Learning Disabled
	Grades K-8
Letter Word Identification	.39
Passage Comprehension	.57
Calculation	.42
Applied Problems	.56
Dictation	.33
Writing Samples	.44
Broad Reading	.50
Broad Mathematics	.58
Broad Written Language	.50

n = 75; Canivez (1996).

Stanford-Binet Intelligence Scale: Fourth Edition (SB-IV)

Kaufman Test of Educational Achievement (K-TEA)

	Grades 3 to 4[a]	Grades 10 to 11[b]
Reading Composite	.65	.60
Math Composite	.70	.79
Spelling	.42	.49

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

Peabody Individual Achievement Test – Revised (PIAT-R)

	Ages 6 to 11
Reading Recognition	.46
Reading Comprehension	.44
Total Reading	.46

n = 48 students referred for academic difficulties;
Prewett & Giannuli (1991)

Wide Range Achievement Test-Revised (WRAT-R)*

	Age 5[a]	Ages 7 and 8[b]	Ages 12 and 13[c]
Reading	.52	.59	.63
Spelling	.52	.61	.48
Arithmetic	.58	.55	.74

[a]n = 57; [b]n = 63; [c]n = 46; SB-IV technical manual.

*Correlations with the WRAT3 were not reported.

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Grades 3 to 4[a]	Grades 10 to 11[b]
Broad Reading	.63	.46
Basic Reading Skills	.52	.31
Reading Comprehension	.70	.65
Broad Mathematics	.62	.75
Basic Mathematics Skills	.72	.70
Mathematics Reasoning	.53	.75
Broad Written Language	.56	.46
Basic Writing Skills	.49	.46
Written Expression	.48	.48

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

Test of Nonverbal Intelligence-Third Edition (TONI-3)

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Learning Disabled	
	Ages 8 to 16	
	Form A	Form B
Broad Reading	.73	.71
Broad Mathematics	.76	.74
Broad Knowledge	.56	.55

n = 20; TONI-3 test manual.

Wide Range Achievement Test (WRAT)*

	Learning Disabled
	Grades 1 to 6
Reading	.38
Spelling	.27
Arithmetic	.23

n = 66; Haddad (1986).

*Based on correlations with the TONI; correlations between the most recent revisions of the TONI and the WRAT were not reported.

Wide Range Intelligence Test (WRIT)

Wide Range Achievement Test – Third Edition (WRAT3)

	Age 5[a]	Ages 6 to 12[b]	Ages 13 to 18[c]	Ages 19+ [d]
Reading	.45	.51	.63	.56
Math	.58	.46	.47	.54
Spelling	.46	.49	.48	.54

[a]n=122; [b]n=428; [c]n=272; [d]n=360; WRIT test manual.

Woodcock-Johnson – Revised, Tests of Cognitive Ability (WJ-R Cog)

Please note that for the WJ-R Cog, correlations are reported based on three types of Broad Cognitive Ability scores. The ***EDev*** *is the Early Development BCA and can be used for preschool children or anyone who is functioning at a low cognitive level. It is comprised of tests 1, 2, 4, 5, and 6. The* ***Std*** *is the Standard BCA and is used most often as the means to do Aptitude/Achievement discrepancies. It is comprised of tests 1 - 7. The* ***Ext*** *is an extended BCA that is comprised of tests 1 - 14.*

Kaufman Test of Educational Achievement (K-TEA)

	Grades 3 to 4[a]			Grades 10 to 11[b]		
	EDev	Std	Ext	EDev	Std	Ext
Reading Composite	.57	.72	.72	.50	.54	.57
Math Composite	.46	.68	.66	.37	.49	.55
Spelling	.38	.53	.52	.26	.38	.50

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

Peabody Individual Achievement Test (PIAT)*

	Grades 3 to 4[a]			Grades 10 to 11[b]		
	EDev	Std	Ext	EDev	Std	Ext
Reading Composite	.54	.65	.66	.57	.65	.68
Mathematics	.38	.57	.54	.32	.48	.46
Spelling	.16	.34	.30	.24	.35	.46

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

*Correlations with the PIAT-R were not reported.

Wide Range Achievement Test – Revised (WRAT-R)*

	Grades 3 to 4[a]			Grades 10 to 11[b]		
	EDev	Std	Ext	EDev	Std	Ext
Reading	.51	.62	.62	.37	.46	.56
Mathematics	.38	.60	.54	.21	.39	.43
Spelling	.40	.53	.54	.32	.44	.50

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

*Correlations with the WRAT3 were not reported.

Woodcock-Johnson – Revised, Tests of Achievement (WJ-R Ach)

	Grades 3 to 4[a]			Grades 10 to 11[b]		
	EDev	Std	Ext	Edev	Std	Ext
Broad Reading	.57	.70	.71	.50	.52	.61
Basic Reading Skills	.51	.61	.67	.34	.35	.51
Reading Comprehension	.62	.74	.73	.59	.62	.67
Broad Mathematics	.36	.58	.57	.37	.57	.60
Basic Mathematics Skills	.45	.68	.66	.40	.58	.61
Mathematics Reasoning	.31	.50	.50	.38	.55	.55
Broad Written Language	.40	.56	.56	.40	.42	.52
Basic Writing Skills	.35	.53	.54	.38	.44	.51
Written Expression	.37	.53	.56	.42	.45	.52

[a]n = 72; [b]n = 51; WJ-R Cog technical manual.

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Haddad, F. A. (1986). Concurrent validity of the Test of Nonverbal Intelligence with learning disabled children. Psychology in the Schools, 23, 361-367.

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Reynolds, C. R., Wright, D., & Dappen, L. (1981). A comparison of the criterion-related validity (academic achievement) of the WPPSI-R and the WISC-R. Psychology in the Schools, 18, 20-23.

APPENDIX E

Sections from *Delaware Code*

military to be reduced by any military compensation received.

(c) For the purpose of subsection (b) of this section state compensation shall be limited to the state share of the base salary as calculated from the appropriate salary schedule, administrative supplements and all other stipends. Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay and all other supplemental compensation multiplied by the ratio of state compensation to total compensation.

(d) The person who may be appointed to replace the principal, teacher or other employee shall be appointed only for the period covered by the leave of absence. (14 Del. C. 1953, § 1327; 56 Del. Laws, c. 292, § 18; 68 Del. Laws, c. 21, § 1.)

Revisor's note. — Section 4 of 68 Del. Laws, c. 21, provides: "The Office of State Personnel shall develop any rules and regulations necessary to implement the provisions of this legislation. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State is responsible for collecting information relating to state compensation. Claims must be filed within 90 days of release from active duty or passage of this legislation, whichever is later."

Section 5 of 68 Del. Laws, c. 21, provides: "This act shall be effective retroactively to August 1, 1990."

Effect of Amendments. — 68 Del. Laws, c. 21, inserted present (b) and (c), and redesignated former (b) as present (d).

§ 1328. Teachers of grades 1-12 inclusive entitled to duty-free period.

In all reorganized school districts each teacher in grades 1-12, inclusive, shall have, during each school day, a duty-free period for at least 30 consecutive minutes but this section shall not bar the allowance of a longer or additional duty-free period each day. (14 Del. C. 1953, § 1328; 59 Del. Laws, c. 93, § 1.)

§ 1329. Employment contracts.

(a) The Department of Education and the boards of education of the reorganized school districts may sign individual employment contracts involving state funds only with those professional employees whose base salary is that provided for in § 1305 and § 1310 of this title. The salary amounts in the contracts so authorized shall be for 1 fiscal year, provided that contracts for administrative personnel covered in subsection (b) of this section shall not be so limited.

(b) Nothing in this title shall be construed as prohibiting the board and any assistant principal, principal, supervisor, administrative assistant, director, assistant superintendent or superintendent from entering into an employment contract for a period of up to 5 years.

(c) Salary amounts in individual contracts provided for in subsection (a) or (b) of this section shall not be contracted for, agreed upon or effective prior to enactment of the Budget Appropriation Bill. (14 Del. C. 1953, § 1329; 57 Del. Laws, c. 263, § 2; 58 Del. Laws, c. 346; 58 Del. Laws, c. 552; 64 Del. Laws, c. 20, §§ 1, 2; 71 Del. Laws, c. 180, § 79.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in the first sentence of (a).

Effect of guidelines for selection of school administrators. — A school board's adopted guidelines for the selection of school administrators do not create for an applicant a legitimate claim of entitlement to a position; they are simply a directive to the administrative staff to be used as a guide in selecting administrators in order to assure competence, and are not a guarantee to any applicant that he will be selected. Kramedas v. Board of Educ., 523 F. Supp. 1268 (D. Del. 1981).

Due process applied to personnel decisions. — Where plaintiff has asserted no racial or sex discrimination or restraint of his First Amendment rights in the hiring decision of a school board, and simply challenges the application of neutral criteria contending that the board made an incorrect or ill-advised decision in not selecting him for a position, the due process clause is not a guarantee against such personnel decisions, and a federal court has no basis upon which to grant relief. Kramedas v. Board of Educ., 523 F. Supp. 1268 (D. Del. 1981).

§ 1330. Work week for certain employees.

The work week for the employees of the Department of Education shall be 37½ hours per week. (14 Del. C. 1953, § 1330; 57 Del. Laws, c. 333, § 20; 71 Del. Laws, c. 180, § 80.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education and the State Board of Vocational Education."

§ 1331. Sterck School for Hearing Impaired; special staff.

(a) In addition to staff otherwise authorized, the Sterck School for the Hearing Impaired may employ supportive staff as follows:

(1) Specialist — speech therapists for a period of 10 months at the rate of 1 for each 6 state units or fraction of 6 units of pupils;

(2) Specialist — psychologist for a period of 12 months at the rate of 1 for each 10 state units or fraction of 10 units of pupils;

(3) Specialist — resource teacher for a period of 10 months at the rate of 1 for each 10 state units or fraction of 10 units of pupils;

(4) Interpreter/tutors for a period of 10 months at the rate of 1 for each 4 deaf pupils in a mainstream program.

(b) Interpreter/tutors are to be certified according to standards prescribed by the Department with the approval of the State Board of Education and paid according to the salary schedule contained in § 1305(a) of this title.

(c) In addition to subsection (a) of this section, the Sterck School may employ a preschool teacher-coordinator who will work with parents in Kent and Sussex Counties.

(1) The teacher-coordinator shall make home visits, shall conduct group sessions with the children and shall coordinate services, when needed, including speech therapy, occupational therapy and physical therapy.

(2) The teacher-coordinator shall work directly with and report to the principal of the Sterck School.

(3) The teacher-coordinator shall be a certified teacher of the hearing impaired who has concentrated in the preschool and/or child-development areas.

(4) Provision for the salary of the teacher-coordinator and for expenses required for this job shall be made a part of the appropriation for the Sterck School.

(d) In addition to staff otherwise authorized, the Sterck School for the Hearing Impaired may employ a Director and Statewide Coordinator. These shall be considered state unit positions and paid according to this title, with appropriate local supplement. (60 Del. Laws, c. 628, § 1; 61 Del. Laws, c. 407, § 3; 61 Del. Laws, c. 409, § 106; 61 Del. Laws, c. 513, § 1; 62 Del. Laws, c. 68, § 42(e); 62 Del. Laws, c. 277, § 11; 63 Del. Laws, c. 80, § 11(f); 63 Del. Laws, c. 322, § 11(f), (g); 64 Del. Laws, c. 90, § 11(d)(xiii); 64 Del. Laws, c. 220, § 6(a); 64 Del. Laws, c. 334, § 11(j)(14); 65 Del. Laws, c. 87, § 11(k)(8); 65 Del. Laws, c. 348, § 12(r)(13); 71 Del. Laws, c. 132, § 352; 71 Del. Laws, c. 180, § 81.)

Revisor's note. — Section 2 of 71 Del. Laws, c. 132, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 71 Del. Laws, c. 132, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 132, effective July 1, 1997, added (d).

71 Del. Laws, c. 180, inserted "Department with the approval of the" in (b).

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§ 1332. Program for autistic pupils; special staff.

(a) Director-specialist — Whenever the Department with the approval of the State Board of Education designates a particular school district to serve as administrator for the statewide program for autistic pupils, that district may employ as a statewide director-specialist for a period of 12 months per year, a director-specialist for 8 or more such units of autistic children. If a director-specialist is assigned responsibility for such a program for fewer than 8 units, the support for that assignment shall be in the same ratio as the number of authorized units is to 8 units. The director-specialist shall hold a doctorate degree in psychology or exceptional children and shall possess such other qualifications for certification as are required by the Department with the approval of the State Board of Education. "Years of experience" in determining salary shall be in accordance with rules and regulations adopted by the Department with the approval of the State Board of Education in this respect. The director-specialist shall be paid the amount for which he or she qualifies under subsections (a), (b) and (d) of § 1305 of this title plus an amount for administrative responsibility determined in accordance with subsection (c) of § 1321 of this title.

(b) In addition to the staff otherwise authorized, the autistic program may employ supportive staff as follows:

(1) Specialist — speech and language therapists for a period of 12 months per year at the rate of 1 for each 3 state units or fractional part of 3 units of pupils;

(2) Specialist — psychologist for a period of 12 months per year at the rate of 1 for each 6 state units or fractional part of 6 units of pupils.

(c) Whenever the Department with the approval of the State Board of Education designates a particular school district to serve as the administering agency for a statewide program for autistic pupils that district may employ specialists as herein authorized to serve the entire statewide program. Specialists so employed shall be paid according to the salary authorized for teachers in § 1305 of this title. The school district authorized to employ such specialists and the director may provide additional salary to such personnel according to § 1304 of this title and shall recover funds so expended from the school districts of residence of the autistic persons by levying a fee against those school districts, including the administering district, whether or not the autistic person is a resident of that district, that is proportional to the number of persons served from a particular district. The fees so levied may be paid by the local school districts from funds collected according to Chapter 6 of this title.

(d) The administering school district may purchase specialized services for any such categories shown in this section rather than employ a staff person to serve that function. If the option to purchase services is exercised, then the dollar value of each full-time equivalent shall be the number of dollars set in the state supported salary schedule for a teacher holding a master's degree with 10 years of experience and employed for 12 months. The calculation of this funding shall be for the current school year. Expenditures of this nature may be used for the purchase of personal services. The administering school district wishing to use funds under thisoption shall first make application to the Department of Education for such use and proceed to exercise the option only after approval by the Department of Education; provided, that the State Board may review any objection to the Department's decision.

(e) The personnel employed pursuant to this section shall not be charged against the allotment of classroom teachers provided by these units of pupils, § 1705 of this title notwithstanding. Teachers shall be employed at the rate of the number of pupil units as of the last day of September of a regular school year except that for a program having 4 or more classes of autistic pupils in a building and providing the number of children in such classes does not exceed 6 as of the last day of September of a regular school year, 3 additional aides may also be employed in lieu of a teacher on application to and approval by the Department of Education; provided, that the State Board may review any objection to the Department's decision. A fraction greater than one half shall be considered a unit.

(f) The Department with the approval of the State Board of Education shall adopt such rules and regulations to establish and provide for parent advisory committees, a peer review committee, a human rights committee, and appropriate liaisons with the Department of Health and Social Services. The Department with the approval of the State Board of Education shall adopt such rules and regulations to establish and provide for an Autistic Program Monitoring Board, to be composed of no less than 7 members and which shall include 1 nonvoting public representative nominated annually by the statewide parent advisory committee. Such representative shall not have any child enrolled in the program. The statewide Autistic Monitoring Review Board shall review at least annually the identification, evaluation and educational program and placement of each autistic pupil and the provision for a free appropriate public education to such pupils. Disputes within or between districts or agencies shall be resolved by this Board. Procedural safeguards guaranteed to autistic pupils, their parents or guardians and to local school districts or agencies shall not be diminished by this provision. (63 Del. Laws, c. 177, § 3; 63 Del. Laws, c. 322, § 11(f), (g); 64 Del. Laws, c. 90, § 11(d)(xiv); 64 Del. Laws, c. 220, § 6(a); 64 Del. Laws, c. 334, § 11(j)(15); 64 Del. Laws, c. 381, § 3; 65 Del. Laws, c. 87, § 11(k)(9); 65 Del. Laws, c. 230, § 4; 65 Del. Laws, c. 348, § 12(r)(14); 66 Del. Laws, c. 85, § 12(p)(15); 66 Del. Laws, c. 303, § 12(m)(13); 66 Del. Laws, c. 421, § 1; 71 Del. Laws, c. 180, §§ 82-85.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, inserted "Department with the approval of the" three times in (a), once in (c) and twice in (f); substituted "Department of Education" for "State Board of Education" twice in (d) and once in (e); and added "provided, that the State Board may review any objection to the Department's decision" to the end of the last sentences of (d) and (e).

CHAPTER 14

PROCEDURES FOR THE TERMINATION OF SERVICES OF PROFESSIONAL EMPLOYEES

Subchapter I. General Provisions

Sec.

1401. Definitions.
1402. Formal communications.
1403. Application of chapter.

Subchapter II. Termination of Services at the End of the School Year

1410. Notice of intention to terminate services.
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Subchapter III. Termination of Services During the School Year

1420. Reasons for termination; rights of teacher.

Subchapter I

General Provisions

§ 1401. Definitions.

As used in this chapter:

(1) "Board" means a board of education of a reorganized school district.

(2) "Teacher" means any certificated professional employee of a public school district. It shall not include a person employed as assistant principal, principal, supervisor, administrative assistant, director, assistant superintendent or superintendent; except that any such person who has completed 3 years of service in the State, 2 years of which shall have been in the employ of the same board, may at his option elect to be assigned as a teacher in the employ of said board. (14 Del. C. 1953, § 1401; 50 Del. Laws, c. 39, § 1; 56 Del. Laws, c. 64; 57 Del. Laws, c. 113; 57 Del. Laws, c. 263, § 1; 66 Del. Laws, c. 255, § 1.)

Teacher-tenure acts are intended to furnish protection to the public school teacher. Board of Pub. Educ. v. Delaney, Del. Supr., 155 A.2d 51 (1959).

And provisions in regard to dismissal must be substantially complied with. Board of Pub. Educ. v. Delaney, Del. Supr., 155 A.2d 51 (1959).

This section does not prohibit board from allowing credit for time spent as administrator. New Castle County Educ. Ass'n v. Board of Educ., Del. Supr., 428 A.2d 1148 (1981).

"Teacher" parallels "classroom teacher". — The word

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in the ensuing fiscal year to assure that its future year-end balance will be sufficient to cover at least this amount.

The financial position report due on or before July 31st of the ensuing fiscal year shall be focused exclusively on local payroll obligations through and including the October 15 payroll cycle. This report shall compare the district's year-end current expense balances from the previous fiscal year, and its preliminary Division III Equalization appropriation for the current year (which amount shall be based on 90% of the Division III amount earned in the previous fiscal year), with the district's projected local salary obligations through October 15. To the extent that this report shows a deficit, the district shall report what steps it will take to meet its payroll obligations through October 15. If the July 31 report projects an October 15 surplus that is less than the amount required to cover 1 month's full local payroll cycle, the district shall also indicate what steps it plans to take to attempt to assure that such a minimum balance will be in place in the subsequent fiscal year.

Whenever the July 31 report shows that a district will be unable to meet all or some of its payroll obligations through October 15, the district may meet those obligations by requesting from the Secretary of Education with the approval of the Secretary of Finance an advance of state funds in an amount sufficient to cover the district's payroll obligations through October 15. Upon such request and approval, the Secretary of Finance shall cause to have the requested funds advanced to the district, and the district shall reimburse the State for those funds no later than November 15 of the same year.

The financial position report shall have been reviewed and approved by the school board of each reorganized school district and be made a part of the public record of that school district. Three copies of each report shall be submitted to the Secretary of Education by the dates specified above. The Secretary of Education shall provide copies of the submitted reports to the Budget Director and Controller General within 5 working days. (68 Del. Laws, c. 84, § 190; 68 Del. Laws, c. 290, § 228; 69 Del. Laws, c. 39, § 1; 69 Del. Laws, c. 291, § 293; 70 Del. Laws, c. 329, § 1; 71 Del. Laws, c. 180, §§ 89, 89A; 71 Del. Laws, c. 194, § 1.)

Revisor's note. — Section 2 of 68 Del. Laws, c. 84, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 68 Del. Laws, c. 84, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

This section became effective upon the signature of the Governor on July 1, 1991.

Section 2 of 68 Del. Laws, c. 290, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 68 Del. Laws, c. 290, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

Section 2 of 69 Del. Laws, c. 291, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 69 Del. Laws, c. 291, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 68 Del. Laws, c. 290, effective July 1, 1992, rewrote the section.

69 Del. Laws, c. 39, effective June 11, 1993, added the language following "7.5 percent level" in the fifth sentence.

69 Del. Laws, c. 291, effective July 1, 1994, substituted "10" for "7.5" in the fourth and fifth sentences.

70 Del. Laws, c. 329, effective May 8, 1996, rewrote the section.

71 Del. Laws, c. 180, redesignated former §§ 1504 through 1509 to be present §§ 1502 through 1507; substituted "Secretary" for "State Board" twice in the first paragraph and once in the last paragraph; and substituted "Secretary of Education" for "State Superintendent of Public Instruction" in the last paragraph.

71 Del. Laws, c. 194, effective July 16, 1997, inserted "to attempt" in the last sentence in the third paragraph; and inserted the present fourth paragraph.

§§ 1508, 1509. Limitation on use of tax revenues; school district financial position reports.

Transferred.

Revisor's note. — 71 Del. Laws, c. 180, redesignated former §§ 1504 through 1509 to be present §§ 1502 through 1507.

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

CHAPTER 16

COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM

Sec.

1601. Purpose.
1602. Appropriation.
1603. Rules and regulations.
1604. Treatment of severe discipline problems component.
1605. School and district level component.
1605A. Prevention component.
1606. State Board waiver authority.
1607. Interagency cooperation.

Revisor's note. — Section 3 of 69 Del. Laws, c. 464, provides: "The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held to be invalid, that invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application."

Section 4 of 69 Del. Laws, c. 464, provides: "Prevention Component. There is a need in Delaware to establish a program to offer prevention-related student support services ("prevention services") to youngsters so as to prevent them from becoming discipline problems in our schools. In the long run, addressing the root causes of discipline problems is much more cost-effective than trying to deal with them after they occur. However, the establishment of a program that will effectively deliver necessary prevention services in a cost-effective manner requires careful planning and coordination among school districts, state and local government agencies, community organizations and private, non-profit agencies. Ideally, the roles of these various agencies would be identified and coordinated into a plan for delivering prevention services that maximizes the impact of the limited resources available for such services by avoiding duplication of effort. To begin to address this need in Delaware, in Fiscal Year 1995, the Family Services Cabinet Council (the "Council") shall develop comprehensive plans for delivering such prevention services in 3 communities in Delaware using the coordinated efforts of school districts, state and local government agencies, community organizations and private, non-profit agencies. The Council, with the Department of Public Instruction and the Department of Services to Children, Youth and Their Families acting as lead agencies, shall establish a process for identifying 3 communities with which to undertake this joint community-Council planning process. Applications by communities wishing to participate in the planning process shall be made by school districts in accordance with standards and a timetable established by the Council. Each application shall set forth a preliminary plan by the community to establish an integrated plan to deliver prevention services, including, but not limited to: outreach programs to promote parental, family and community involvement in reducing and resolving school discipline problems; school-linked support services to help youngsters with family or health problems that may be adversely affecting their academic performance and their conduct at school; training to help students and school personnel resolve conflicts peacefully and non-disruptively; and assistance, through training and other methods, to help teachers better manage the behavior of students in their classrooms. In selecting the 3 communities to be included in the planning process, the Council shall give preference to applications submitted by 2 or more school districts working in concert, where appropriate. The Council shall also give preference to applications in which the applicant's preliminary plan includes private, non-profit agencies and community organizations as partners in the application and identifies the roles those agencies and organizations are to play in delivering prevention services in the community; indicates how grants from the federal government and foundations will be used or sought to help deliver prevention services in the community; and expresses an intent to use the services of state and local agencies as part of their prevention plan and identifies the roles those agencies are to play in delivering prevention services in the community. The timetable established by the Council shall require that the 3 comprehensive plans be completed no later than January 15, 1995, so that adequate consideration may be given by the Council to funding pilot projects based on the plans in the 3 communities using such funds as are appropriated for such purpose in the Fiscal Year 1995 annual appropriations bill."

This chapter became effective upon the signature of the Governor on July 22, 1994.

§ 1601. Purpose.

It is the purpose of this chapter to provide for the establishment of a statewide comprehensive program to improve student discipline in the public elementary and secondary schools of the State. The program shall provide for the treatment of pupils who are exhibiting discipline problems and for the establishment of services to school pupils which will reduce the rate and severity of discipline problems in the future. The program shall operate under the supervision and direction of the Department of Education. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 90.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in the last sentence.

§ 1602. Appropriation.

The General Assembly shall annually provide an appropriation for the operation of the Comprehensive School Discipline Improvement Program in the budget appropriation bill. From the funds appropriated, the Department may allocate funds to the public school districts for the financial support of various components of the program. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 90.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department" for "State Board" in the second sentence.

§ 1603. Rules and regulations.

The Department of Education shall, from time to time, adopt and promulgate such rules and regulations as will be necessary for the implementation of the program authorized by this chapter. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 90.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education."

§ 1604. Treatment of severe discipline problems component.

The Department of Education shall establish a program component which will provide alternative educational and related services for the more severe discipline problems in the public schools. This component will serve primarily secondary school students, including but not limited to: youngsters who have been expelled from regular schools, students who may be subject to expulsion, and others who have serious violations of the local school district discipline code. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

(1) School districts shall make application to the Department of Education for funding to implement programs authorized under this section. Preference shall be given to applications from consortia of school districts. To the extent feasible, programs offered under this component should serve eligible pupils within a

county, however, multiple sites may be operated by a single consortia of school districts within a county.

(2) Any application submitted under this section shall specify the types and level of services to be provided and an estimate of the number of youngsters to be served. The application shall also include a budget of proposed expenditures during a fiscal year. That budget shall indicate, at a minimum, the funds being requested from appropriations authorized under this section and funds to be obtained from all other sources.

(3) All applications submitted to the Department of Education under this section shall indicate an agreement to fund at least 30 percent of the total cost of services provided from sources of funding other than those authorized under this section.

(4) All projects funded under this section shall submit an annual evaluation report on the effectiveness of the program to the Department of Education. Such report shall incorporate the data and information specified by the Department.

(5) School districts shall be permitted to use funds collected in accordance with the provisions of Chapter 6 of this title to make tuition payments for youngsters assigned to programs authorized under this section.

(6) Nothing in this section shall prohibit a consortia of school districts from contracting for educational or related services with public or private agencies when operating programs authorized under this section.

(7) The provisions of § 4130 of this title shall not apply to youngsters enrolled in programs authorized under this section. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 91.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department" for "State Board" twice in the introductory paragraph, once in (1) and (3), and twice in (4).

§ 1605. School and district level component.

The Department of Education shall be authorized to approve and provide financial support for programs to provide alternative educational and related services to disruptive students in the public schools. This component will serve students, in schools enrolling pupils in grades K through 12, who are causing repeated disruptions in the regular classes to which they are assigned. Services may be delivered in a variety of modes with students assigned to the specific programs for short- or long-term assistance. Programs authorized under this section could also serve as a transition for youngsters returning from programs operated under the provisions of § 1604 of this title. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

(1) School districts shall be permitted to use personnel authorized by any of the provisions of this title to establish alternative educational and related service programs for disruptive students. Such personnel shall continue to be paid in accordance with salary schedules specified in Chapter 13 of this title.

(2) In the event that a school district uses personnel authorized under various sections of this title to establish and operate a program for disruptive students, the district may elect to employ 2 service aides or 2 instructional aides, paid in accordance with § 1324 of this title, in lieu of 1 staff member paid in accordance with § 1305 of this title.

(3) Any school which either enrolls pupils in at least 2 of the grades 3 through 12 or enrolls pupils solely in 1 or more of grades K through 3, and which establishes a program for disruptive students in accordance with the provisions of this section and the rules and regulations of the Department of Education may make application to the Department for an incentive grant to help defray the cost of operating such program. No school may qualify for more than 1 incentive grant per fiscal year, and all applications for such grants must have the prior approval of the board of education of the school district in which the applicant school is located. The maximum dollar value of an incentive grant shall be specified in the annual budget appropriation bill. Funds available to the Department of Education shall be allocated on a competitive basis if in any fiscal year more schools are eligible for funding than there are funds appropriated for the incentive grants.

(4) Funds provided to a school under an incentive grant provided under subdivision (3) of this section may be used for any purpose that Division I or II funds may be used, provided, however, that such funds shall not be used to pay salaries to employees beyond the state-supported salaries specified in Chapter 13 of this title.

(5) To achieve the most cost-effective impact from the incentive funds authorized by this section and to increase the coordination of services by schools and other governmental and non-governmental social service agencies consistent with § 1607 of this title, schools and school districts shall consider contracting for educational or related goods and services with the State Departments of Services for Children, Youth and Their Families and Health and Social Services, and other governmental and non-governmental social service agencies using funds authorized by this section. Each school filing a report pursuant to subdivision (6) of this section

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shall include information regarding the provisions of this subdivision (5).

(6) All schools receiving an incentive grant pursuant to subdivision (3) of this section shall submit an annual evaluation report on the effectiveness of the program to the Department of Education. The report shall be in a format and shall include the data and information specified by the Department.

(7) To receive a supplemental grant greater than the dollar amount for base grants funded in support of programs defined in this section by the annual budget act, schools shall establish a site-based committee in the school to govern discipline matters and shall meet the criteria set forth in this subdivision. Supplemental grants shall be available for grades 7, 8, 9 and 10 only. The annual budget act shall establish the dollar amount of such supplemental grants. Before issuing funding pursuant to this subdivision, the Department shall determine that the school's application meets the following criteria:

a. The grant application must certify that the majority of the members of the school level committee are members of the school professional staff, of which a majority shall be instructional staff; that the committee contains representatives of the support staff, student body (for schools enrolling students, grades 7 through 12), parents and the community; that representatives of the employee groups are chosen by members of each respective group and representatives of the nonemployee groups are appointed by the local board of education; and that the committee operates on the 1-person, 1-vote principle for reaching all decisions.

b. The grant application must certify that the committee has the authority, within established local district budgetary guidelines and at its sole discretion, to:

1. Establish a school code of conduct which defines the roles and responsibilities of all members of the school community (administrators, teachers, support staff, contracted service personnel, students, families and child/family advocates) and which is consistent with the established state and federal laws, state and federal regulations, local board policies, local district codes of conduct and local district budgetary guidelines, unless relevant waivers have been granted.

2. Hear concerns from a staff member dissatisfied with the disposition of any disciplinary matter by the school administration;

3. Refer students to programs defined in § 1604 of this title; provided, however, that any child with disabilities be referred to such programs through the child's Individualized Education Plan;

4. Design, approve and oversee the implementation of programs established in the school as defined in this chapter;

5. Establish and enforce the school's attendance policy, including mandating attendance in programs established in paragraph 7. of this subdivision;

6. Establish extended day, week or year programs, for students with discipline or attendance problems, or at risk of academic failure, that provide for the assessment of penalties for violations of school discipline or attendance policies and for academic acceleration and tutoring, mentoring and counseling services for such students and their families as an integral program component;

7. Establish staff development programs for conflict resolution for all school staff, and establish programs in classroom and behavioral management for schools staff identified as needing improvement;

8. Design student mentoring, conflict resolution and/or peer counseling programs for all students, especially for those who are identified as having chronic discipline, academic or attendance problems. (69 Del. Laws, c. 464, § 1; 70 Del. Laws, c. 214, §§ 1-4; 70 Del. Laws, c. 518, §§ 1-3; 71 Del. Laws, c. 180, § 91.)

Revisor's note. — Section 4 of 70 Del. Laws, c. 214, provides: "Because of the fact that the site-based committees will be established for the first time in the 1995-1996 school year, funding contingent upon the satisfaction of the criteria set forth in § 6 of this act shall, for the 1995-1996 school year, be released to schools which have provided the State Board of Education on or before Oct. 1, 1995, with a preliminary plan for satisfying the criteria in § 6 of this act, which plan shall demonstrably increase teacher and parental involvement in addressing school discipline issues during the 1995-1996 school year. On or before March 15, 1996, each school which has received such funding shall provide the State Board with a report on the implementation of its preliminary plan, which report shall be provided to each of the school's teachers."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 70 Del. Laws, c. 214, effective July 12, 1995, substituted "K through 12" for "6 through 12" in the introductory language; substituted "at least 2 of the grades 3 through 12" for "at least 2 of the grades 6 through 12" in the first sentence of (3); rewrote (5); and added (7).

70 Del. Laws, c. 518, effective July 17, 1996, in (7), substituted "majority of the members ... instructional staff" for "composition of the site-based committee is in proportion to the percentage of building-level administrators and building-level professional instructional staff of the school" in a., substituted "established state

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and federal … have been granted" for "district code of conduct and related policies established by the local board of education" in b.1., deleted b.2. and redesignated the remaining sub-subparagraphs accordingly.

71 Del. Laws, c. 180, substituted "Department" for "State Board" twice in the introductory paragraph, three times in (3), twice in (6), and once in the introductory paragraph of (7).

§ 1605A. Prevention component.

The Family Services Cabinet Council (Council), with the Department of Education and the Department of Services for Children, Youth and Their Families acting as lead agencies, shall administer a program to offer prevention-related student support services (prevention services) to students to prevent them from becoming discipline problems and from failing academically in our schools. Within the limits of appropriations made for this purpose, the Council shall provide rules and regulations for the award of prevention grants and the conduct of prevention programs authorized under this section, subject to the following limitations:

(1) The Council shall issue prevention funding to local school districts proposing to establish an integrated plan to deliver prevention services including, but not limited to, academic tutoring and student mentoring programs to provide at-risk students with the extra help they may need to succeed academically and with positive adult role models; outreach programs to promote parental, family and community involvement in students' academic studies and in reducing and resolving school discipline problems; school-linked support services to help students with family or health problems that may be adversely affecting their academic performance and their conduct at school; training to help students and school personnel resolve conflicts peacefully and non-disruptively; and assistance to help teachers better manage the behavior of students in their classrooms.

(2) Applications for funding pursuant to this section shall be made by school districts in accordance with procedures and standards established by the Council. Each applicant shall set forth an integrated plan to provide prevention services consistent with subdivision (1) of this section. To avoid duplication of effort, maximize the impact of limited resources, and increase the effect of efforts by state, local, community and private, nonprofit agencies through increased coordination and cooperation, the Council shall give preference to applications which:

a. Are submitted by 2 or more school districts working in concert, where appropriate;

b. Include private, nonprofit agencies and community organizations as partners in the application, and identify the roles those agencies and organizations are to play in delivering prevention services in the community;

c. Indicate how grants from the federal government and foundations will be used or sought to help deliver prevention services in the community; and

d. Identify the roles state and local agencies are to play in delivering prevention services in the community.

(3) The Council shall provide technical assistance to districts preparing applications and ongoing assistance to districts awarded funding pursuant to this section.

(4) The Council shall establish a timetable for the award of grants pursuant to this section which shall provide, at minimum, for a period of 1 month for joint planning between the Council and the applicants that the Counsel selects as finalists eligible for a funding award. During such joint planning, the Council and the applicant shall refine the applicant's prevention plan, ensure that the plan makes cost-effective use of the resources and services of state, local, community and private, nonprofit agencies, and consider the incorporation of successful elements of other districts' prevention programs into the applicant's plans. Final awards shall be made by the Council on or before January 15 of each year for the subsequent school year, contingent upon the appropriation of funds for such purpose in the annual appropriations act. (70 Del. Laws, c. 215, § 1; 71 Del. Laws, c. 180, § 92.)

Revisor's note. — This section became effective upon the signature of the Governor on July 12, 1995.

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "Department of Public Instruction" in the first sentence of the the introductory language.

§ 1606. State Board waiver authority.

The Department of Education shall have the authority to waive or suspend provisions of the Delaware Code in the implementation of programs authorized under this chapter; provided however, that such waiver or suspension of a provision of the Code shall not result in an increased financial obligation to the State. The Department of Education is also authorized to waive or suspend its rules and regulations in order to maximize the projected impact of programs authorized under this chapter. The State Board shall be advised of any waiver of a regulation it must promulgate or approve, and may deny such waiver within 30 days or by the next regularly scheduled meeting, whichever is earlier, of the waiver's approval by the Department. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 93.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in the first and second sentences; and added the third sentence.

§ 1607. Interagency cooperation.

The Department of Education and the public school districts are to work cooperatively with other state agencies, particularly the Department of Health and Social Services and the Department of Services for Children, Youth and Their Families, in the development and implementation of programs authorized under this chapter. The intent of such cooperation is to avoid redundancy in services and to maximize the impact of resources authorized under this chapter. (69 Del. Laws, c. 464, § 1; 71 Del. Laws, c. 180, § 94.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in the first sentence.

CHAPTER 17

STATE APPROPRIATIONS

Sec.

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1705. Determination of amount of Division I appropriation; Division III funds.
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1722. Accounting for textbooks, subject matter materials and other school property entrusted to individual students.
1723. Comprehensive school discipline improvement programs.

§ 1701. Amount to be appropriated by General Assembly.

The General Assembly shall make provision for the annual payment to the free public schools of the State an amount which shall amply provide for the items authorized by this title and those additional items that the General Assembly deems appropriate. (32 Del. Laws, c. 160, § 61; Code 1935, § 2706; 14 Del. C. 1953, § 1701; 71 Del. Laws, c. 180, § 94A.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, rewrote the section.

§ 1702. Divisions of school appropriations.

(a) Appropriations for the support, maintenance and operation of the free public schools of the State shall be in 3 divisions: Division I shall include appropriations designated for the purpose of paying the employees of the various school districts of the State in accordance with the state-supported salary schedules contained in Chapter 13 of this Division II shall include the appropriations fo other school costs, except those for debt service the transportation of pupils; Division III shall clude appropriations for educational advancemen

(b) The Department of Education shall in it annual budget request recommend an amount to b appropriated to each school district for the purpose of educational advancement on a unit basis provided that for the school year beginning July 1, 1969, the amount recommended shall not be less than $200 per unit of pupils in the respective reorganized school districts as of September 30, 1968, and shall include all data on which such recommended amounts are based, and the General Assembly shall appropriate for the school year beginning July 1, 1969, an amount not less than the State's share of the aforesaid $200 per unit allotment. (47 Del. Laws, c. 364, § 1; 14 Del. C. 1953, § 1702; 56 Del. Laws, c. 292, § 20; 71 Del. Laws, c. 180, § 95.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "State Board of Education" in (b).

§ 1703. Unit of pupils.

As used in this chapter:

(a) "Unit" or "unit of pupils" is defined according to this schedule of numbers of pupils for elementary schools:

Beginning July 1, 1984

Grade 1	19
Grade 2	19
Grade 3	19
Grade 4	20
Grade 5	20
Grade 6	20

In grades 7 through 12, the unit is defined as 20 pupils. A major fraction shall be considered a unit and shall be considered any fraction greater than one half of the total number of pupils authorized per unit for a given year.

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mittee composed of equal representation from the Department of Education, the Department of Health and Social Services, the Department of Services for Children, Youth and Their Families, the Governor's Advisory Council for Exceptional Citizens, the Interagency Resource Management Committee and private providers, including Head Start providers to assist in:

(1) Recommending guidelines and evaluation procedures to be utilized by the Department of Education and the IRMC in awarding contracts for the provision of early childhood educational services to preschool age children who live in poverty, which guidelines and evaluation procedures shall be consistent with existing Head Start criteria; and

(2) Advising the FSCC and IRMC of possible opportunities for improved interagency collaboration and/or gaps in the delivery of early childhood educational services to preschool age children who live in poverty. (69 Del. Laws, c. 351, § 1; 71 Del. Laws, c. 180, § 144.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Department of Education" for "Department of Public Instruction" in the introductory language and (1).

§ 3003. Early Childhood Education Program annual report.

The IRMC shall make annual reports to the General Assembly and the FSCC regarding the State Early Childhood Education Program, which shall include:

(1) The number and percent of preschool age children who are eligible for early childhood educational services by county and by contracting provider;

(2) The amount of state funds requested for continuation and expansion per contracting provider;

(3) The amount of state funds received for continuation and expansion per contracting provider;

(4) The amount of state funds expended per contracting provider; and

(5) Any other data reflecting the progress of expansion of early childhood educational services to preschool age children who live in poverty and its effectiveness that the IRMC regards as pertinent. (69 Del. Laws, c. 351, § 1.)

CHAPTER 31

EXCEPTIONAL PERSONS

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Subchapter I

Definitions

§ 3101. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them except when the context clearly indicates a different meaning:

(1) "Exceptional persons" means a handicapped person or a gifted and talented person, as defined herein.

(2) "Free appropriate public education" means special education that is specially designed instruction including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions, and related services as defined by Department of Education rules and regulations approved by the State Board of Education and as may be required to assist a handicapped person to benefit from an education that:

a. Is provided at public expense, under public supervision and direction and without charge in the public school system;

b. Meets the standards of the Department of Education as set forth in this title or in the rules and regulations of the Department as approved by the State Board;

c. Includes elementary, secondary or vocational education in the State; and

d. Is individualized to meet the unique needs of the handicapped person.

The related services to be provided shall be based upon a program for each child as approved by the Department; provided, that the State Board may review any objection to the Department's decision. Funds for such services are to be paid from the Educational Contingency Fund of the Department of Education.

(3) "Gifted or talented person" means a person in the chronological age group 4 through 20 years inclusive, who by virtue of certain outstanding abilities is capable of a high performance in an identified field. Such an individual, identified by professionally qualified persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to realize his or her full contribution to self and society. A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

a. General intellectual ability;
b. Specific academic aptitude;
c. Creative or productive thinking;
d. Leadership ability;
e. Visual and performing arts ability;
f. Psychomotor ability.

(4) "Handicapped person" means a person in the chronological age group 3 through 20 years inclusive, and any other person as otherwise provided for in this title, who because of mental, physical, emotional or learning disability problems, as defined by the Department of Education rules and regulations approved by the State Board of Education, requires special education and related services in order to develop his or her capabilities. This term includes children 3 through 4 inclusive who are experiencing developmental delay and speech and/or language delay. A handicapped person is eligible for services beginning on his or her 3rd birthday.

(5) "Disruptive person" means a person who continually exhibits behavior that does not meet minimal standards of conduct established by the school authorities and that are required in the school and classrooms; whose behavior is in defiance of school personnel, disrupts the school instructional program and is antagonistic to other students and the purpose of the school.

(6) "Person" means a child or other individual ages 3 through 20 years inclusive.

(7) "Parent," for purposes of this chapter, includes a handicapped child's biological or natural parent, or, as appropriate, a stepparent, guardian, surrogate parent or custodian. With respect to a handicapped person who has reached his 18th birthday, and for whom no guardian has been appointed, all rights and entitlements accorded to parents by this chapter shall be deemed accorded directly to the handicapped person.

(8) An "intensive learning center pupil" is an identified handicapped person who in most instances will have been classified as educable mentally handicapped, seriously emotionally disturbed or learning disabled and who manifests any of the following characteristics: learning difficulties so severe that he or she cannot respond to the curriculum and services normally provided in a special class for the identified handicap, continually exhibits disruptive behavior in a special class or withdraws into himself or herself to such an extent as to be unserved in the special class authorized for his or her particular handicap. A handicapped person may be assigned to an intensive learning center only after a complete review of his or her records by an identification, placement, review and dismissal committee. All intensive learning centers in a district or in a consortium of districts must be approved by the Department and the State Board of Education. (48 Del. Laws, c. 194, § 2; 14 Del. C. 1953, § 3101; 49 Del. Laws, c. 410, § 2; 51 Del. Laws, c. 287, § 2; 55 Del. Laws, c. 198, § 2; 57 Del. Laws, c. 237, § 2; 60 Del. Laws, c. 571, § 4; 61 Del. Laws, c. 190, §§ 4, 7; 62 Del. Laws, c. 411, § 1; 63 Del. Laws, c. 410, § 1; 64 Del. Laws, c. 63, § 2; 65 Del. Laws, c. 381, § 2; 68 Del. Laws, c. 84, §§ 214, 215; 68 Del. Laws, c. 126, §§ 10, 11; 71 Del. Laws, c. 180, § 145.)

Revisor's note. — Section 2 of 68 Del. Laws, c. 84, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 68 Del. Laws, c. 84, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 68 Del. Laws, c. 84, effective July 1, 1991, rewrote (4); and substituted "3" for "4" in (6).

68 Del. Laws, c. 126, effective July 9, 1991, substituted "seriously emotionally disturbed" for "socially or emotionally maladjusted" in the first sentence of (8). 68 Del. Laws, c. 126 also amended (4) as it appeared prior to the amendment by 68 Del. Laws, c. 84, by substituting "physically impaired" for "orthopedically handicapped."

71 Del. Laws, c. 180, in the introductory language of (2), substituted "Department of Education rules and regulations approved by the State Board of Education" for "State Board of Education rules and regulations"; in (2)b., substituted "Department of Education as set forth" for "State Board of Education as set forth" and substituted "the Department as approved by the State Board" for "the Board"; in the last paragraph of (2), substituted "Department; provided, that the State Board may review any objection to the Department's decision" for "State Board of Education" in the first sentence, and substituted "Department of Education" for "State Board of Education" in the second sentence; in the first sentence of (4), inserted "Department of Education rules and regulations approved by the"; and, in the last sentence of (8), inserted "Department and the."

Subchapter II

General Provisions

§ 3110. Rules and regulations.

(a) The Department of Education is designated as the state agency that, with the approval of the State Board, shall make rules and regulations to carry out this and other titles relative to the identification, evaluation, education, training and transportation of exceptional persons including specific definitions for the categories of units for exceptional children authorized for funding in § 1703 of this title.

(b) The rules promulgated by the Department of Education with the approval of the State Board of Education shall provide the criteria by which identified handicapped persons, ages 3 through 20 inclusive, shall be assigned to a public school facility, or, if otherwise eligible for admission, to an institution of another state agency, or released for authorized placement in a private school or agency, pursuant to subchapter III of this chapter.

(c) The Department of Education, with the approval of the State Board of Education, shall establish and maintain procedures, by regulation, to assure that handicapped children and their parents are guaranteed procedural safeguards with respect to the provision of a free, appropriate, public education. (48 Del. Laws, c. 194, § 2; 14 Del. C. 1953, § 3102; 51 Del. Laws, c. 287, § 2; 61 Del. Laws, c. 190, § 7; 64 Del. Laws, c. 63, § 3; 68 Del. Laws, c. 84, § 217; 71 Del. Laws, c. 180, § 146.)

Revisor's note. — Section 2 of 68 Del. Laws, c. 84, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."

Section 3 of 68 Del. Laws, c. 84, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 68 Del. Laws, c. 84, effective July 1, 1991, substituted "3" for "4" in (b).

71 Del. Laws, c. 180, in (a), substituted "Department of Education" for "State Board of Education" and inserted "with the approval of the State Board"; in (b), inserted "Department of Education with the approval of the"; and, in (c), inserted "Department of Education, with the approval of the."

§ 3111. Advisory council for exceptional citizens.

The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by P.L. 94-142 [20 U.S.C. § 1400 et seq.]. (14 Del. C. 1953, § 3108; 51 Del. Laws, c. 287, § 3; 61 Del. Laws, c. 190, § 7; 71 Del. Laws, c. 180, § 147.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, inserted "the Department of Education" in the first sentence.

Subchapter III

Persons With Disabilities

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

71 Del. Laws, c. 180, substituted "Persons With Disabilities" for "Handicapped Persons" in the subchapter heading.

§ 3120. Right to receive public education.

The State shall provide, in the school districts of the State, or in other state institutions and agencies or in special programs and private agencies as established or approved by the Department with the approval of the State Board, that each disabled person as defined in this chapter shall receive a free and appropriate public education designed to meet his or her needs. The Department of Education shall be the agency responsible for the implementation of this required provision. (61 Del. Laws, c. 190, § 7; 71 Del. Laws, c. 180, §§ 148, 148A.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, in the first sentence, substituted "Department with the approval of the State Board" for "State Board of Education" and substituted "disabled" for "handicapped"; and, in the second sentence, substituted "Department of Education" for "State Board of Education."

§ 3121. Special classes and facilities.

Each school district and other state agencies responsible for the care of Delaware citizens shall provide and maintain, under appropriate regulations of the Department of Education approved by the State Board of Education, special classes and facilities to meet the needs of disabled persons as herein defined and recommended for special education or training who are residents of any geographical area within the State and who can be served by such special classes and facilities. This and other sections of this chapter and this title may be carried out by assigning children who are residents of 1 school district to attend classes in facilities of another school district according to Chapter 6 of this title concerning tuitions. Placement in a state agency that is not part of the public school system shall be in accordance with rules developed under

§ 3110 of this title. (42 Del. Laws, c. 125, § 1; 14 Del. C. 1953, § 3103; 51 Del. Laws, c. 287, § 2; 61 Del. Laws, c. 190, § 7; 71 Del. Laws, c. 180, §§ 148A, 149.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, in the first sentence, inserted "the Department of Education approved by" and substituted "disabled" for "handicapped."

§ 3122. Identification and reporting of disabled person.

Each school district shall be required to identify, locate and evaluate, or reevaluate, any person residing within the confines of that school district who is disabled, regardless of the severity of the disability, and who is in need of special education and related services. The Department of Education with the approval of the State Board of Education shall provide through rules and regulations that a practical method for carrying out this section be developed. The identification system so developed shall provide information concerning the time and method of the evaluation or reevaluation of the disabled person and shall indicate the training, education or related services he or she is receiving and the location of that training, education or related services. The system shall further indicate any instance in which the person is not receiving training, education or related services and the reason for that situation. Nothing in this chapter or the rules and regulations issued thereunder shall authorize or require medical treatment of any person who objects, or, in the case of a minor, whose parent or guardian objects thereto on religious grounds. (42 Del. Laws, c. 125, § 1; 14 Del. C. 1953, § 3105; 51 Del. Laws, c. 287, § 2; 61 Del. Laws, c. 190, § 7; 71 Del. Laws, c. 180, §§ 148A, 150.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, in the first sentence, substituted "disabled" for "handicapped" and substituted "disability" for "handicap"; in the second sentence, inserted "Department of Education with the approval of the"; and, in the third sentence, substituted "disabled" for "handicapped."

§ 3123. Supportive services and residential programs.

(a) Any school district administering a program for autistic children may provide from its own personnel or contract with another state agency or a private service provider if necessary for appropriate supportive services, including, but not limited to, respite care, physical, art and music education, psychological services, language and speech therapy, physical and occupational therapy. The supportive services to be provided shall be based upon a program for each child as approved by the Department of Education; provided, that the State Board may review any objection to the Department's decision. The school district designated by the Department with State Board approval as the administering agency for a statewide program for autistic pupils shall annually submit in its budget a request for funds for such services.

(b) Community-based residential units for autistic children may be operated by a school district designated and approved by the Department with State Board approval as the administering agency for a statewide program for autistic pupils. When the school district operates a community-based residential program, that program shall meet the following minimum standards:

(1) Pre-puberty and post-puberty children shall be housed separately. In no case shall a child under age 12 be housed with a child over age 16 except as approved by the Human Rights and Peer Review committees of the statewide autistic program.

(2) Residential units shall be provided at the rate of 1 residential unit for each 4 residential pupils except that a maximum of 5 pupils may be housed in 1 residential unit. Pupils housed for the purpose of respite care, additionally defined to mean a period not to exceed 12 months, shall not be counted with respect to this provision. At no time shall the total number of pupils exceed 6 including respite placements.

(3) Residential teacher coordinators shall be provided for a period of 12 months per year at the rate of 3 full-time equivalent teacher coordinators per residential unit.

(4) Residential child care specialists shall be provided for a period of 12 months per year at the rate of 6 full-time equivalent residential child care specialists per residential unit. The Department with the approval of the State Board of Education shall determine the necessary educational requirements for the residential child care specialists. (61 Del. Laws, c. 190, §§ 5, 8; 64 Del. Laws, c. 381, §§ 1, 2; 71 Del. Laws, c. 180, § 151.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, in (a), substituted "Department of Education; provided, that the State Board may review any objection to the Department's decision" for "State Board of Education" in the second sentence, and substituted "Department with State Board approval" for "State Board of Education" in the third sentence; and, in (b), substituted "Department with State Board approval" for "State Board of Education" in the first sentence of the introductory language, and inserted "Department with the approval of the" in the second sentence of (4).

§ 3124. Private placement with financial aid.

(a) Private placement with financial aid shall be granted only to a "complex or rare" disabled person defined as a person in the chronological age group 4 through 20 years inclusive, who is found to suffer from 2 or more of the defined disabilities, or who is so severely afflicted by a single disability, that the total impact of the condition means that he or she cannot benefit from the regularly offered free appropriate public educational programs. The determination shall be made by a committee appointed by the local board of education for identification, placement, review and dismissal of disabled persons and by the Department of Education that no school district or other state agency has a suitable free and appropriate program of education for the particular person. Such private placement shall be in a school/institution approved by the Department of Education. The Department shall make the final determination concerning the designation of a person eligible under this definition.

(b) Disputes concerning the private placement of a child are subject to the hearing procedures set forth in § 3135 of this title. Subject to the parties' right to appeal, the decision of the hearing panel appointed by the Secretary of Education is final and binding on all parties and the State Board of Education.

(c) "Financial aid" shall include maintenance, transportation and tuition as herein defined:

(1) "Maintenance" shall mean the cost for room and board at a residential institution or in a residence approved by the institution in which a person is enrolled. Maintenance does not include the cost of health care or treatment. Maintenance shall be provided on a 12-month basis in appropriate cases.

(2) "Transportation" or the reimbursement for transportation provided by the State for an eligible disabled person will be by the most economically feasible means compatible with the person's disabling condition and approved under rules and regulations of the Department approved by the State Board of Education and according to the following:

a. When the legal residence of a person receiving tuition assistance for private placement is within 60 miles (1 way) of the school or institution, the person shall be eligible for round trip transportation or a reimbursement for that transportation on a daily basis.

b. When the legal residence of a person receiving tuition assistance for private placement is in excess of 60 miles but less than 100 miles from the school or institution, the person shall be eligible for transportation or a reimbursement for that transportation from his or her residence to the school or institution and return on a 1 round trip per week basis and on such other occasions as may be required because the school is not in session due to scheduled vacations or holidays of the school or institution.

c. When the legal residence of a person receiving tuition assistance for private placement is in excess of 100 miles from the school or institution, the person shall be eligible for transportation or a reimbursement for that transportation on the basis of 1 round trip per year from his or her residence to the school or institution and return and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution.

(3) "Tuition" shall mean payment for instructional services, materials and supplies. Tuition does not include the cost of health care or treatment. Tuition shall be provided on a 12-month basis in appropriate cases.

(4) The amount authorized for payment shall be the amounts charged by that institution for tuition or for program costs, transportation and maintenance in accordance with the definitions set forth herein. (61 Del. Laws, c. 190, §§ 5, 8; 61 Del. Laws, c. 271, § 1; 61 Del. Laws, c. 337, §§ 1, 2; 64 Del. Laws, c. 63, § 4; 71 Del. Laws, c. 180, §§ 148A, 152.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "disabled" for "handicapped" twice in (a) and once in the introductory language of (c)(2); in the first sentence of (a), substituted "disability" for "handicap" and substituted "disabilities" for "handicaps"; substituted "Department of Education" for "State Board of Education" in the second and third sentences of (a); substituted "Department" for "State Board of Education" in the last sentence of (a); substituted "Secretary of Education" for "Superintendent of Public Instruction" in (b); and, in the introductory language of (c)(2), inserted "Department approved by the" and substituted "disabling" for "handicapping."

Residential placement not always required. — Although child may be better off because of her attendance at a private residential school, residential placement is not required when the school district has offered a free program which can confer appropriate educational benefits on the child. Ahern v. Keene, 593 F. Supp. 902 (D. Del. 1984).

Child considered complex handicapped person. — A child who has auditory and visual perception problems, with concomitant fine and gross motor disfunction and immature behavior, may be considered a complex handicapped person. Rollison v. Biggs, 567 F. Supp. 964 (D. Del. 1983).

Subchapter IV

Gifted or Talented Persons

§ 3126. Rules and regulations.

The extent of programs and facilities provided for persons determined to be gifted or talented shall be in accordance with the rules and regulations of the Department as approved by the State Board of Education. (48 Del. Laws, c. 194, § 2; 14 Del. C. 1953, § 3102; 51 Del. Laws, c. 287, § 2; 61 Del. Laws, c. 190, § 7; 71 Del. Laws, c. 180, § 153.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, inserted "Department as approved by the."

Subchapter V

Procedural Safeguards

§ 3130. Opportunity to examine records and educational program.

(a) The parents of a handicapped child, either personally or through a representative, shall be afforded an opportunity to inspect and review all relevant records with respect to:

(1) The identification, evaluation and educational program and placement of the child; and

(2) The provision of a free, appropriate, public education to the child.

(b) The parents shall have the right to obtain copies of all records, except the actual evaluation or examination instrument, described in subsection (a) of this section either without charge, or, at the discretion of the district or state agency, at a fee not to exceed actual cost. Under no circumstances shall a fee be assessed which effectively prevents parents from exercising their right to inspect, review and copy records.

(c) The parents of a handicapped child shall have the right to visit and observe, either personally or through a representative, their child's current or proposed public educational program. (64 Del. Laws, c. 63, § 1.)

§ 3131. Minutes of meetings.

Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a handicapped child's free, appropriate, public education, at the option of the parents of the handicapped child, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising his or its option under this section. (64 Del. Laws, c. 63, § 1.)

§ 3132. Surrogate parents.

The Department with the approval of the State Board of Education shall establish and maintain procedures to protect the rights of a handicapped child whenever the parents of the child are not known, unavailable or the child is a ward of the State, including the assignment of an individual, who shall not be an employee of any public agency involved in the education or care of the child, to act as a surrogate parent for the child. The surrogate parent shall exercise and be accorded all rights of a parent to assure the provision of a free, appropriate, public education to the child. (64 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 180, § 154.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, inserted "Department with the approval of the" in the first sentence.

§ 3133. Notice required.

Written notice which meets the requirements under § 3134 of this title must be given to the parents of a handicapped child a reasonable time before any school district or state agency:

(1) Proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of a free and appropriate public education to the child; or

(2) Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free, appropriate, public education to the child. (64 Del. Laws, c. 63, § 1.)

§ 3134. Contents of notice.

The notice under § 3133 of this title must include:

(1) A full explanation of all of the procedural safeguards available to the parents under this subchapter;

(2) A description of the action proposed or refused by the district or agency, an explanation of why the district or agency proposes or refuses to take the action, and a description of any options the district or agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record or report the district or agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the district or agency's proposal or refusal. (64 Del. Laws, c. 63, § 1.)

§ 3135. Administrative hearing.

(a) A parent, district or state agency may initiate a hearing concerning any right or entitlement conferred by this chapter.

(b) A hearing is initiated by submission of a written request to the Secretary of Education.

(c) The Secretary of Education, upon receipt of a request for hearing, shall appoint a hearing panel whose membership shall meet the requirements of § 3137 of this title.

(d) The district or state agency shall inform the parent of any free or low-cost legal and other relevant services available in the area whenever:

(1) The parent requests the information; or

(2) A hearing is initiated pursuant to this section. (64 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 180, § 155.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in (b) and (c).

§ 3136. Timeliness of administrative hearings.

(a) The Secretary of Education shall ensure that, not later than 45 days after receipt of a request for a hearing:

(1) A hearing is conducted;

(2) A final decision is reached in the hearing; and

(3) A copy of the decision is mailed to each of the parties.

(b) The hearing panel, for good cause, may grant specific extensions of time beyond the 45 day limit at the request of either party; provided, however, that a final decision shall be reached and a copy of the decision mailed to each of the parties within 15 days of the date of the hearing, or, where applicable, within 15 days of the completion of post-hearing argument. (64 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 180, § 155.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in the introductory language of (a).

Finality of decisions. — The lack of a sufficiently final decision from the Due Process Panel does not require the case be returned to the Panel for reconsideration; a federal statute allows the federal court to grant such relief as the court determines is appropriate. Slack v. State of Del. Dep't. of Pub. Instruction, 826 F. Supp. 115 (D. Del. 1993).

§ 3137. Hearing panel.

(a) A hearing panelist may not be:

(1) A person who is an employee of a district or agency which is involved in the education or care of the child; or

(2) A person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) The Secretary of Education shall maintain a list of the persons who serve as hearing panelists. The list must include a statement of the qualifications of each of those persons.

(c) All hearing panelists shall have successfully completed such training as may be required by the Secretary of Education to ensure the adequate knowledge and competent performance of panelists.

(d) Each panel shall consist of 3 panelists, appointed by the Secretary of Education on a rotating basis, as follows:

(1) One attorney admitted to practice in the State;

(2) One educator knowledgeable in the field of special education and special educational programming;

(3) One lay person with demonstrated interest in the education of the handicapped included on an approved list compiled by the Advisory Council for Exceptional Citizens and submitted to the Secretary of Education.

(e) The Department with approval of the State Board of Education shall promulgate regulations which, consistent with this subchapter, further define hearing procedures and the conduct of hearing panelists which shall include standards of competency, expertise and training for hearing panelists. (64 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 180, §§ 155, 156.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in (b), (c), the introductory language of (d), and in (d)(3); and inserted "Department with approval of the" in (e).

§ 3138. Hearing rights; procedure.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront and cross-examine adverse witnesses;

(3) Compel the attendance of witnesses as authorized by § 3139 of this title;

(4) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing;

(5) Obtain a written or electronic verbatim record of the hearing, with the form of record supplied in the discretion of the Secretary of Education, at public expense;

(6) Obtain a written decision which includes findings of fact and law.

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(c) The hearing panel shall ensure that parents who have requested a hearing have been advised of the procedural safeguards provided by this subchapter.

(d) Any hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(e) Any testimony presented at a hearing authorized by this section shall be under oath or affirmation.

(f) Copies of all written decisions shall be provided to the Advisory Council for Exceptional Citizens after deleting any personally identifiable information. (64 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 180, § 157.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in (a)(5).

§ 3139. Subpoenas.

(a) Authority to issue subpoenas is conferred upon the Secretary of Education, or the Secretary's designee, in order to implement § 3138(a)(3) of this title.

(b) Upon the application of any party at least 12 days prior to hearing, a subpoena shall be issued requiring the attendance of the person or persons listed in the application.

(c) If a person subpoenaed to attend a hearing fails to obey without reasonable cause, or if such a person in attendance refuses, without lawful excuse, to be examined or to answer pertinent questions, an application may be filed with the Family Court for an order directing such person to show cause why he should not appear or testify. Upon return of the rule, the Court shall examine such person under oath, and if the Court shall determine, after giving such person an opportunity to be heard, that he refused without legal excuse to attend or testify at the hearing, despite the subpoena, the Court may order such person to comply therewith. Any failure to obey the order may be punished as a contempt of the Family Court, pursuant to the Rules of the Family Court. (64 Del. Laws, c. 63, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 180, § 157.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "Superintendent of Public Instruction" in (a).

§ 3140. Burden of proof.

The burden of proof and persuasion in any proceeding convened pursuant to § 3135 of this title shall be on the district or state agency which is a party to the proceeding. (64 Del. Laws, c. 63, § 1.)

§ 3141. Finality of decision.

A decision made by a hearing panel under this subchapter is final, unless a party to the hearing brings a civil action under § 3142 of this title. (64 Del. Laws, c. 63, § 1.)

§ 3142. Judicial review.

(a) Any party aggrieved by the decision of the hearing panel may file a civil action in the Family Court. Such proceeding shall be initiated by the filing of a complaint within 30 days of the date of the decision.

(b) In any action brought under this section, the Court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant such relief as the Court determines is appropriate.

(c) The Secretary of Education, or the Secretary's designee, shall certify and file with the Court the record of the administrative hearing, which shall include all documents submitted, a transcript of all testimony, and the decision of the hearing panel. (64 Del. Laws, c. 63, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 180, § 157.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

Effect of Amendments. — 71 Del. Laws, c. 180, substituted "Secretary of Education" for "State Superintendent of Public Instruction" in (c).

§ 3143. Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceedings regarding a complaint, unless the district or state agency and parents of the child agree otherwise, the child involved in the complaint shall remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, shall be placed in the public school program until the completion of all proceedings. (64 Del. Laws, c. 63, § 1.)

CHAPTER 32

VOCATIONAL YOUTH ORGANIZATIONS

Sec.
3201. Purpose.
3202. Administration.
3203. Vocational Youth Organization Fund.
3204. Grants.

§ 3201. Purpose.

It is the intent and purpose of the General Assembly of this State through this chapter to encourage the youth of Delaware to pursue vocational and occupational education when such pursuit is deemed in the best interest of the student and of this State. (14 Del. C. 1953, § 3201; 57 Del. Laws, c. 490.)

§ 3202. Administration.

This chapter shall be administered by the Department of Education. (14 Del. C. 1953, § 3202; 57 Del. Laws, c. 490; 71 Del. Laws, c. 180, § 158.)

Revisor's note. — Section 198 of 71 Del. Laws, c. 180, provides: "This bill shall become effective 15 days after its signature into law." The act was signed by the Governor on July 16, 1997.

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APPENDIX F

Definitions of Terms

DEFINITIONS OF TERMS

ASSISTIVE TECHNOLOGY DEVICE. §300.5

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

ASSISTIVE TECHNOLOGY SERVICE. §300.6

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes: (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

CHILD WITH A DISABILITY. §300.7

Child with a disability means a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

CONSENT. §300.500

Consent means that (i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (iii) (A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

CONTROLLED SUBSTANCE. §300.520 (d)(1)

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act.

(1) Schedule I. – (A) The drug or other substance has a high potential for abuse. **(B)** The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II. (A) The drug or other substance has a high potential for abuse. **(B)** The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions. (C) Abuse of the drug or other substance may lead to severe psychological or physical dependence.

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(3) Schedule III. **(A)** The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II. **(B)** The drug or other substance has a currently accepted medical use in treatment in the United States. (C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV. **(A)** The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III. **(B)** The drug or other substance has a currently accepted medical use in treatment in the United States. **(C)** Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V. **(A)** The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV. **(B)** The drug or other substance has a currently accepted medical use in treatment in the United States. **(C)** Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

DAY; BUSINESS DAY; SCHOOL DAY. §300.9

(a) ***Day*** means calendar day unless otherwise indicated as business day or school day;

(b) ***Business day*** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.403(d)(1)(ii)); and

(c) ***School day*** means any day, including a partial day, that children are in attendance at school for instructional purposes. The term ***school day*** has the same meaning for all children in school, including children with and without disabilities.

(EDUCATIONAL) SURROGATE PARENT. Delaware Code, Title 14 §3132.

The Department, with the approval of the State Board of Education, shall establish and maintain procedures to protect the rights of a handicapped child whenever the parents of the child are not known, unavailable or the child is a ward of the State, including the assignment of an individual, who shall not be an employee of any public agency involved in the education or care of the child, to act as a surrogate parent for the child. The surrogate parent shall exercise and be accorded all rights of a parent to assure the provision of a free, appropriate, public education to the child.

EVALUATION. §300.500.(b)(2)

Evaluation means procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

FREE APPROPRIATE PUBLIC EDUCATION. §300.13

Free appropriate public education or ***FAPE*** means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.340-300.350.

INDIVIDUALIZED EDUCATION PROGRAMS. §300.340

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.341-300.350.

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INDIVIDUALIZED EDUCATION PROGRAM TEAM. §300.344

(a) *General.* The public agency shall ensure that the IEP team for each child with a disability includes—(1) The parents of the child; (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child; (4) A representative of the public agency who - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency; (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) If appropriate, the child.

(b) Transition services participants.

(1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of - (i) The student's transition services needs under §300.347(b)(1); or (ii) The needed transition services for the student under §300.347(b)(2); or (iii) Both. (2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. (3)(i) In implementing the requirements of §300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. (ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.

(d) Designating a public agency representative. A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs) $300.17 and §303.340

Individualized family service plan or ***IFSP*** has the meaning given the term in 34 CFR 303.340(b).

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§.303.341 through 303.346. (b) As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must-- (1) Be developed in accordance with §§303.342 and 303.343; (2) Be based on the evaluation and assessment described in Sec. 303.322; and (3) Include the matters specified in Sec. 303.344. (c) Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility. (Approved by the Office of Management and Budget under control number 1820-0550)

Note: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in Sec. 303.344, and (2) is developed in accordance with the requirements of this part. Sec. 303.342 Procedures for IFSP development, review, and evaluation. (a) Meeting to develop initial IFSP--timelines. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in Sec. 303.321(e). (b) Periodic review (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine-- (i) The degree to which progress toward achieving the outcomes is being made; and (ii) Whether

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modification or revision of the outcomes or services is necessary. (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. (c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under Sec. 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided. (d) Accessibility and convenience of meetings. (1) IFSP meetings must be conducted--(i) In settings and at times that are convenient to families; and (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. (2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. (e) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided. (Approved by the Office of Management and Budget under control number 1820-0550)

Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise. Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section. Sec. 303.343 Participants in IFSP meetings and periodic reviews. (a) Initial and annual IFSP meetings.(1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants: (i) The parent or parents of the child. (ii) Other family members, as requested by the parent, if feasible to do so; (iii) An advocate or person outside of the family, if the parent requests that the person participate. (iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in Sec. 303.322. (vi) As appropriate, persons who will be providing services to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including-- (i) Participating in a telephone conference call; (ii) Having a knowledgeable authorized representative attend the meeting; or (iii) Making pertinent records available at the meeting. (b) Periodic review. Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section. (Approved by the Office of Management and Budget under control number 1820-0550)

Content of an IFSP. Sec. 303.344

(a) Information about the child's status.

(1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.
(b) Family information. With the concurrence of the family, the IFS must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

(c) Outcomes. The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine-- (1) The degree to which progress toward achieving the outcomes is being made; and (2) Whether modifications or revisions of the outcomes or services are necessary. (d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including-- (i) The frequency, intensity, and method of delivering the services;

(ii) The natural environments, as described in Sec. 303.12(b), and Sec. 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment; (iii) The location of the services; and (iv) The payment arrangements, if any. (2) As used in paragraph (d)(1)(i) of this section-- (i) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and (ii) Method means how a service is provided. (3) As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided. (e) Other services. (1) To the extent appropriate, the IFSP must include-- (i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources. (2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and ``well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) Dates; duration of services. The IFSP must include-- (1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in Sec. 303.342; and (2) The anticipated duration of those services. (g) Service coordinator.

(1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may--

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child and family's IFSP; or (ii) Appoint a new service coordinator. (3) As used in paragraph (g)(1) of this section, the term profession includes ``service coordination." (h) Transition from Part C services. (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with Sec. 303.148, to-- (i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or (ii) Other services that may be available, if appropriate. (2) The steps required in paragraph (h)(1) of this section include-- (i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition; (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and (iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in Sec. 303.322, and copies of IFSPs that have been developed and implemented in accordance with Secs. 303.340 through 303.346. (Approved by the Office of Management and Budget under control number 1820-0550)

Note 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting--during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.

Note 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 3: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with Sec. 303.12. The ``other services" in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services). Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 4: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided.

(b) The actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents. [58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998; 64 FR 12536, Mar. 12, 1999] Sec. 303.345 Provision of services before evaluation and assessment are completed. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in Sec. 303.322, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes-- (1) The name of the service coordinator who will be responsible, consistent with Sec. 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and (2) The early intervention services that have been determined to be needed immediately by the child and the child's family. (c) The evaluation and assessment are completed within the time period required in Sec. 303.322(e). (Approved by the Office of Management and Budget under control number 1820-0550

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

Responsibility and accountability. Sec. 303.346

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP. (Approved by the Office of Management and Budget under control number 1820-0550)

ILLEGAL DRUG. §300.520 (d)(2)(i)(ii)—

Illegal drug means a controlled substance: but (ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

LOCAL EDUCATIONAL AGENCY. §300.18 (a), (b), (1) and (2)

Local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

The term includes—An educational service agency, as defined in §300.10; Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law; and

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NATIVE LANGUAGE. §300.19

Native language, if used with reference to an individual of limited English proficiency, means the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

PARENT. §300.20

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with §300.515.

Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

PERSONALLY IDENTIFIABLE. §300.500(b)(3)

Personally identifiable means that information includes - (i) The name of the child, the child's parent, or other family member; (ii) The address of the child; (iii) A personal identifier, such as the child's social security number or student number; or (iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

PRIVATE SCHOOL (being developed)

QUALIFIED PERSONNEL. §300.23

Qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

RELATED SERVICES. §300.24

(a) ***Related services*** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) ***Individual terms defined.*** The terms used in this definition are defined as follows:

(1) ***Audiology*** includes—(i) Identification of children with hearing loss; (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (iv) Creation and administration of programs for prevention of hearing loss; (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) ***Counseling services*** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) ***Early identification and assessment of disabilities in children*** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) ***Medical services*** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) ***Occupational therapy***—(i) Means services provided by a qualified occupational therapist; and (ii) includes - (A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and (C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) ***Orientation and mobility services***—(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and (ii) Includes teaching students the following, as appropriate: (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); (B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (C) To understand and use remaining vision and distance low vision aids; and(D) Other concepts, techniques, and tools.

(7) ***Parent counseling and training*** means - (i) Assisting parents in understanding the special needs of their child; (ii) Providing parents with information about child development; and (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) ***Physical therapy*** means services provided by a qualified physical therapist.

(9) ***Psychological services*** includes - (i) Administering psychological and educational tests, and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and (vi) Assisting in developing positive behavioral intervention strategies.

(10) ***Recreation*** includes- (i) Assessment of leisure function; (ii) Therapeutic recreation services; (iii) Recreation programs in schools and community agencies; and (iv) Leisure education.

(11) ***Rehabilitation counseling services*** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) ***School health services*** means services provided by a qualified school nurse or other qualified person.

(13) ***Social work services in schools*** includes - (i) Preparing a social or developmental history on a child with a disability; (ii) Group and individual counseling with the child and family; (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program: and (v) Assisting in developing positive behavioral intervention strategies.

(14) ***Speech-language pathology services includes*** - (i) Identification of children with speech or language impairments; (ii) Diagnosis and appraisal of specific speech or language impairments; (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) ***Transportation*** includes - (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

SPECIAL EDUCATION. §300.26

(a) General. (1) ***Special education*** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. (2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section: (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education.

(b) ***Individual terms defined.*** The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to non-disabled students or their parents as a part of the regular education program.

(2) ***Physical education*** - (i) Means the development of - (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) ***Specially-designed instruction*** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction - (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) ***Travel training*** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to - (i) Develop an awareness of the environment in which they live; and (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) ***Vocational education*** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

SUPPLEMENTARY AIDS AND SERVICES. §300.28

Supplementary aids and services means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate in accordance with §§300.550-300.556.

TRANSITION SERVICES. §300.29

Note: **Also see IEP Team (b) Transition Services participants 300.344(b).**

Transition services means a coordinated set of activities for a student with a disability that—

(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation:

(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) Includes - (i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation. (b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

TRANSITION SERVICES PARTICIPANTS. §300.344 (b)

(1) Under paragraph (a)(7) of this section, 300.344(a)(7), the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of - (i) The student's transition services needs under §300.347(b)(1); or (ii) The needed transition services for the student under §300.347(b)(2); or (iii) Both.

(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

(3)(i) In implementing the requirements of §300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. (ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) **Determination of knowledge and special expertise.** The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.

(d) ***Designating a public agency representative.*** A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

WEAPON §300.520 (d)(3)

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code: The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length.

STATE EDUCATION AGENCY (SEA) *Delaware Code, Title 14* §101.

Establishment of the Department of Education.

The general administration of the educational interests of the State shall be vested in a Department of Education within the Executive Branch, hereinafter in this title referred to as the "Department."